# No. 11554

## United States

# Circuit Court of Appeals

### For the Ninth Circuit.

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J. R. MASON,

Appellant,

vs.

MERCED IRRIGATION DISTRICT,

Appellee.

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# Transcript of Record

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Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division



Rotary Colorprint, 870 Brannan Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

J. R. MASON,
In Pro Per
1920 Lake St.,
San Francisco, Calif.

For Appellee:

DOWNEY, BRAND and SEYMOUR,
Capital National Bank Bldg.,
Sacramento, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
for the Southern District of California
Northern Division

In Bankruptcy No. 4818

In Proceedings for Confirmation of a Plan of Composition of Bond Indebtedness

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

## INTERLOCUTORY DECREE

The petition of Merced Irrigation District for confirmation of a plan of composition of its bond indebtedness heretofore came on duly and regularly for hearing before this Court, said Irrigation District appearing by its counsel, C. Ray Robinson, Hugh K. Landram and Stephen W. Downey, and objectors appearing by counsel as follows: Messrs. Freidenrich & Selig and Kirkbride & Wilson, appearing for Claire S. Strauss; Messrs. Brobeck, Phleger & Harrison, appearing for Florence Moore, et al; Messrs. tum Suden and tum Suden appearing for Minnie Rigby and Richard tum Suden as executors, etc. of the estate of Wm. A. Lieber; Hugh K. McKevitt, Esq., appearing for Pacific National Bank of San Francisco; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; Clark, Nichols & Eltse appearing for Mary E. Morris; Chase, Barnes & Chase, Esqs.,

appearing for R. D. Crowell and Belle Crowell and Coburn Cook, Esq., appearing for Milo W. Bekins, et al. Thereupon the Court proceeded to hear [2] the allegations and proofs in support of said petition and plan of composition and all matters and things pleaded and offered to controvert the facts in said petition and in opposition to said plan of composition. The said petition and said matters and objections having been duly and fully heard and argued and the hearing as to all parties having been concluded and the matter duly submitted to the Court by and on behalf of all parties, and the Court having considered all objections to said petition and said plan of composition and having filed herein a memorandum setting forth its conclusions with respect to the facts and the law and having made and entered its written Findings of Fact and Conclusions of law in addition to those set forth in said memorandum and having found and now finding as follows, to-wit:

1. That petitioner, Merced Irrigation District, is an irrigation district duly formed, organized and existing under and by virtue of the provisions of the California Irrigation District Act of the State of California and said District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress and Approved August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States) and that the petition herein was filed pursuant to the provisions of said Act approved August 16, 1937.

2. That petitioner is located wholly in the County of Merced, in the Southern Judicial District of California, Northern Division, and within the territorial jurisdiction of this court; that proof of due publication and mailing of the notice of creditors heretofore ordered by this Court has been duly filed; that such notice was first duly published as required by law and the order of this Court, and that copies thereof were duly mailed to each of the creditors at their last known postoffice addresses at least sixty (60) days before the date fixed for hearing and as required by law and this court. That notice has been duly and regularly given in time, form and manner as required by law and this Court and that said petition was duly and regularly continued from time to time until Monday the 21st day of November, 1938, at 10 o'clock a.m. of said day when said petition and all objections thereto came duly and regularly on for hearing and were heard.

3. That the filing of the petition herein was authorized by proper resolution duly passed and adopted by the Board of Directors of petitioner prior to the filing thereof and that the fees required by the act hereinbefore mentioned were duly paid.

4. That petitioner, Merced Irrigation District, is insolvent and unable to meet its debts as they mature and desires to effect a plan of composition of its outstanding bond indebtedness. That petitioner did heretofore duly adopt such plan of composition and that said plan of composition is set

forth in the petition herein and is as follows, to-wit:

"That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety thousand Dollars ($16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent [4] to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars ($8,338,-011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America

to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars ($8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars ($16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars ($8,338,011.90) bearing interest at the rate of four per cent (4%) per annum. [5]

"The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto."

That the plan of composition as offered by the petitioner herein is fair, equitable and for the best interests of its creditors and does not discriminate unfairly in favor of or against any creditor or creditors or class of creditors; that the plan of composition complies with the provisions of Section

83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted and approved in writing by or on behalf of creditors of petitioner owning and holding more than ninety per cent (90%) of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims owned, held or controlled by petitioner; that all amounts to be paid by petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable and that the offer of the plan and its acceptance are in good faith and petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the terms thereof.

5. That prior to the filing of the petition herein the Reconstruction Finance Corporation, an agency of the United States, pursuant to contract with petitioner, purchased at the composition rate aforesaid, and ever since has owned, held and controlled and [6] now owns, holds and controls, over 90% of the outstanding bond indebtedness of said District, to-wit, the Reconstruction Finance Corporation now owns, hold and controls approximately Fourteen Million Seven Hundred Two Thousand Dollars ($14,702,000.00) principal of the outstanding Sixteen Million One Hundred Ninety Thousand Dollars ($16,190,000.00) principal bond indebted-

ness of said District. That said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned, held and controlled by it. That there are no bonds owned, held or controlled by said petitioner district. That before the filing of the petition herein, said Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

6. That all of the allegations and averments set forth in said petition for confirmation of the plan of composition of bond indebtedness are true; and that all the denials of said petition set forth in the answers of objectors are untrue.

7. That heretofore on the 18th day of April, 1935, petitioner herein filed in this Court a petition for debt readjustment under and pursuant to an Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States. That by said proceeding petitioner sought to confirm a plan of readjustment of its bond indebtedness under which the holders thereof would receive $515.01 for each $1000 bond and interest coupons due July 1, 1933 and subsequently thereto. That thereafter on the 4th day of March, 1936, judgment was entered by the above Court confirming said plan of readjustment. That thereafter an appeal to the United States Circuit Court of Appeals for the Ninth Circuit was taken from said judgment in said pro-

ceeding by certain of the objectors here represented. That before said appeal could be heard and before the record on appeal was prepared or printed, the United States Supreme Court on May 25th, 1936, in Ashton v. Cameron County Water Improvement District, 298 U. S. 513, adjudged the congressional legislation pursuant to which said proceeding was commenced and prosecuted, to-wit, said Act of Congress approved May 24, 1934, Chapter 345 and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States to be unconstitutional. Thereafter on March 16, 1937, appellants in said proceeding filed a motion in the United States Circuit Court of Appeal for the Ninth Circuit praying that the printing of the record on appeal be dispensed with and that the cause be advanced on the calendar and submitted and that an order be made forthwith reversing the decree with directions to dismiss the cause on the ground that jurisdiction of the District Court to render said decree depended altogether on the Act of Congress held to be unconstitutional by the United States Supreme Court as aforesaid, and that the District Court had no jurisdiction to render the decree appealed from. Thereafter on the 12th day of April, 1937, the United States Circuit Court of Appeals granted said motion and pursuant thereto reversed the decree of the District Court and by mandate directed this court to dismiss the entire case (89 Fed. (2d) 1002) and thereafter petition for certiorari was denied by the Supreme Court of the United States (302 U. S. 709). The court

finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court [8] and that there was no judgment on the merits in said proceeding. The court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that petitioner herein is not barred in this proceeding by res adjudicata or otherwise.

8. The court finds that on the 27th day of July, 1937, and prior to the enactment of Public No. 302 enacted by the Seventy-fifth Congress and approved August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States), petitioner herein brought a proceeding in the Superior Court, County of Merced, State of California, under the terms of an act of the legislature of the State of California passed in 1937 and therein designated as "Irrigation District Refinancing Act" Statutes of California, 1937, Chapter 24. That in and by said proceeding petitioner sought the benefits of said act with respect to a plan of readjustment of its bond indebtedness under which outstanding bonds of consenting bondholders would be retired by payment of $515.01 for each $1000 principal amount and interest due July 1, 1933, and subsequently, and pursuant to which, if and when said plan should be confirmed by the court the bonds of non-consenting bondholders would be condemned and their value fixed as in said act provided. That thereafter a hearing upon said plan

was held by the court as provided by Section 8 of said Irrigation District Refinancing Act and certain of the objectors here represented objected to the plan and appeared in opposition thereto. That thereafter on March 10, 1938, Albert F. Ross, Judge of the Superior Court presiding, announced that he was prepared to enter an interlocutory judgment pursuant to Section 8 of said Irrigation District Refinancing Act and directed that Findings and such interlocutory judgment be prepared by petitioner pursuant to said Section 8. That no findings or interlocutory judgment have been prepared, signed or entered and nothing further has been done in said proceeding. That said action pending in the State Court does not prejudice or bar the commencement, maintenance or prosecution of this proceeding.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the plan of composition as proposed and presented and contained in said petition be and the same is hereby confirmed and approved.

That all of the outstanding bonds and other indebtedness of petitioner that are affected by the plan, as set forth, itemized and enumerated in the petition in this cause, are of one and the same class, are payable without preference out of funds derived from the same source or sources, and are hereby allowed as obligations of the petitioner, whether presented or not, and that the several holders thereof are entitled to participate ratably in the distribution of the funds in accordance with

the plan of composition and the decrees of this court as hereinafter provided.

That in order to provide the funds necessary to pay the incidental expenses and to pay for the outstanding bonds of the petitioner as contemplated by the plan of composition aforesaid and the orders of this court, petitioner is hereby authorized forthwith to duly issue and sell its refunding bonds to the Reconstruction Finance Corporation in amounts required to pay such incidental expenses and to pay the sum equal to 51.501 cents on the dollar of the principal amount of its outstanding bonds (not purchased by the Reconstruction Finance Corporation), and to repay the Reconstruction Finance Corporation the money expended by it, to-wit: 51.501 cents on the dollar on the principal amount of [10] the outstanding bonds purchased by it. That the old bonds so purchased by the Reconstruction Finance Corporation will thereupon be cancelled and returned to petitioner and that each and all of said refunding bonds so issued and sold by the petitioner to the Reconstruction Finance Corporation, as provided herein, are hereby declared to be valid obligations of such district and shall not at any time be affected by the plan of composition, or these proceedings.

That during the pendency of these proceedings the Reconstruction Finance Corporation is authorized to purchase from the holders thereof any of the outstanding bonds of petitioner upon the following terms and conditions, to-wit: The Recon-

struction Finance Corporation to pay the sum of 51.501 cents on each dollar of the principal amount of the outstanding bonds, paying nothing on interest, and deducting from said amounts for missing coupons as provided in this decree for payment of the outstanding bonds by the disbursing agent. That when purchased, as provided in this paragraph, the old bonds shall be delivered to the Reconstruction Finance Corporation and held by it as security for the funds furnished by it for such purpose, with interest thereon at 4% per annum, until such time as it receives from petitioner its refunding bonds for such disbursements and interest, or petitioner may pay such interest and deliver bonds for the principal.

That the petitioner within sixty (60) days from the time this decree becomes final, or such additional time as the Judge may allow, set aside and deposit in trust with the Treasurer of Merced Irrigation District, who is hereby appointed as disbursing agent of this court, the sum necessary to pay the holders of its outstanding bonds, other than bonds which shall have been purchased by the Reconstruction Finance Corporation as herein provided 51.501 cents on the dollar of the unpaid principal amount thereof, excluding all interest due or to become due and which matured July 1, 1933, and subsequently thereto, and the holders of said bonds be and they are hereby required to deposit said bonds with all unpaid interest coupons attached with the disbursing agent before payment

is made as herein provided; that if any bonds are so deposited with any unpaid interest coupons due on or before July 1, 1934, missing, the disbursing agent shall make a deduction from the amount to be paid therefor, a sum equal to 44.78 cents for each dollar of the face amount of such missing coupons, and if any bond be presented with any unpaid interest coupons maturing after July 1, 1934, missing, deductions shall be made from the amount to be paid therefor equal to the full face value of the missing coupons. In case any deductions are made on account of missing coupons, and such coupons are afterwards deposited within the time prescribed by this decree, there shall be paid to the holder of such missing coupons the amount deducted therefor; that when payments shall have been made for the old bonds and coupons as provided in the plan of composition and this decree, the disbursing agent shall mark said bonds and coupons so paid "Cancelled" and return them to the petitioner.

That in the event any of the old bonds and interest coupons are not surrendered to the disbursing agent within sixty (60) days after receipt by such agent of the money with which to retire the same, or such additional time as the judge may allow, then the proportionate sum to which the holders thereof may be entitled under the plan of composition, and terms of this decree, shall be paid by the disbursing agent to the clerk of this court as Registrar, and thereafter paid by him to the

holders of such bonds in [12] accordance with the provisions of this decree and such further decrees of this court as made in reference to the payment of such bonds.

That the clerk of this court shall cause to be published in the Merced Sun-Star and The Wall Street Journal, Pacific Coast Edition, newspapers published in Merced and San Francisco, respectively, for two successive issues notice to the holders of the outstanding bonds of the petitioner directing every holder thereof to deposit any and all bonds of the petitioner with the disbursing agent within the sixty (60) day period above provided or thereafter with the clerk of this court for payment in accordance with this decree or be forever barred from claiming or asserting as against petitioner or any individually owned property located within petitioner district or the owners thereof any claim or lien arising out of said bonds; provided, however, that nothing contained herein shall preclude the Reconstruction Finance Corporation from asserting its rights and claims under the old bonds so purchased by it to the extent and amount so expended in acquiring the same, with interest thereon at the rate of 4% per anum, until petitioner shall have delivered to the Reconstruction Finance Corporation its refunding bonds in form satisfactory to said Reconstruction Finance Corporation in the aggregate principal amount equal to the money so expended in acquiring such old bonds, with interest.

That after the expiration of sixty (60) days from

the date of receipt of the funds to carry out the terms of the plan of composition and retire the outstanding indebtedness as provided in such plan, the disbursing agent shall make full and complete report to this court for confirmation, including an itemized statement of all receipts and disbursements together with a list of old bonds outstanding at the time of such report, showing serial number of and amount of each outstanding unpaid bond.

That any and all holders of the outstanding bond indebtedness of petitioner district be and are hereby enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien, by legal proceedings or otherwise, which they may have against petitioner or against any of the lands situated within petitioner district and held by individuals.

Dated: February 21, 1939, at 1:05 p.m.

/s/ PAUL J. McCORMICK,
Judge. [14]

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[Title of District Court and Cause.]

## NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT (UNDER RULE 73).

Notice is hereby given that West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking associa-

tion; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; [16] Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company,

a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, creditors of Merced Irrigation District and respondents in this cause hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Interlocutory Decree entered in this action on February 21, 1939, the same being the Interlocutory Decree entered after the hearing upon the plan of composition and from the whole thereof.

Dated: March 28th, 1939.

/s/ CHAS. L. CHILDERS,
Attorney for West Coast Life Insurance Company.

/s/ HUGH McKEVITT,
Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE.

/s/ By GEORGE CLARK,
Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE.

/s/ By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and Belle Crowell.

/s/ DAVID FREIDENWICH,

Attorney for Claire S. Strauss.

/s/ PETER TUM SUDEN,

Attorney for Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased.

BROBECK, PHLEGER & HARRISON.

/s/ By EVAN HAYNES,

Attorneys for Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937.

/s/ W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins; deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman;

Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; [18] D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell.

Copies mailed to Stephen H. Downey, C. Ray

Robinson, Hugh Landran, Attorneys for Debtor, and to Reconstruction Finance Corp. 3/30/39.

E. L. S. [19]

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[Title of District Court and Cause.]

## OBJECTIONS TO PROPOSED FINAL DECREE

Comes now J. R. Mason, one of the creditors of the above named District, and states that he has through courtesy of counsel received a copy of the proposed Final Decree, Discharge and Order Settling Report and Account of Disbursing Agent herein and objects to the proposed Final Decree and to the proposed draft thereof in the following respects:

1. Said creditor objects to that part of the proposed Final Decree which provides a period or time limit of twelve months for presentation of outstanding old obligations to the Clerk of this Court as Registrar for payment pursuant to the Plan of Composition, and objects to any time limit for such presentation becoming a part of the Final Decree, and objects to that part of the Final Decree which would bar from participating in the Plan of Composition if not presented within a period of twelve months, or any period of time.

2. Objects to that part of the proposed Final Decree which provides that holders of outstanding bonds are permanently [21] or otherwise restrained

or enjoined from asserting any claim or demand against the petitioner or property situated therein or the owners thereof.

Dated: July 9, 1941.

W. COBURN COOK,
Attorney for J. R. Mason, Objecting Creditor.

[Endorsed]: Filed July 10, 1941. [22]

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[Title of District Court and Cause.]

## FINAL DECREE, DISCHARGE AND ORDER SETTLING REPORT AND ACCOUNT OF DISBURSING AGENT

The petition of Merced Irrigation District for Final Decree, Discharge and Order Settling Report and Account of Disbursing Agent came on duly and regularly to be heard on Friday the 11th day of July, 1941, at the hour of 10 o'clock A.M. in accordance with Order heretofore duly made herein setting said petition for hearing and it appearing that due and proper notice has been given in accordance with law and the order of court heretofore made herein of the hearing of said petition, and evidence both oral and documentary having been adduced and all persons interested having been heard in connection with said matter, and it further appearing that each and every, all and singular, the allegations of said petition are true; and it further

appearing that all matters and things set forth in the report and account of E. E. Neel as [23] disbursing agent and which report was filed herein on June 2, 1941, are true and correct and that the said E. E. Neel has faithfully discharged all obligations as disbursing agent;

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That the receipts and disbursements by, and all other official acts of, E. E. Neel, as disbursing agent herein, be and the same are hereby approved and confirmed and the duties of said E. E. Neel as disbursing agent are hereby terminated and his liability thereunder is forever discharged.

2. That the sum of $54,506.95 paid to the Clerk of this Court as Registrar herein by said disbursing agent be disbursed by the Registrar for the purpose of taking up and retiring, in accordance with the plan of composition approved in this cause, such remaining outstanding old obligations of petitioner as are affected by the plan of composition and which may be presented to the Registrar for that purpose within the period of twelve months from the date hereof. That all such obligations so presented and retired forthwith cancelled and returned to petitioner by the Registrar. That all such outstanding old obligations of petitioner which are not so presented to the Registrar within twelve months from the date hereof shall be forever barred from participating in the plan of composition or in the funds held by said Clerk as Registrar. That upon

the expiration of the period of twelve months from the date hereof the Clerk of this Court shall forthwith turn over to petitioner, Merced Irrigation District, Merced, California, the balance, if any, then remaining in the Registry of the Court after deducting all lawful charges of said clerk. That said balance, if any, shall be used by petitioner in the payment of its new refinancing bonds called "Second Refunding Issue" hereafter referred to or the interest thereon. [24]

3. That except as provided in paragraph 2 hereof, all the old bonds and other obligations of petitioner affected by the plan of composition approved herein whether heretofore surrendered and cancelled or remaining outstanding and by whomsoever held are hereby cancelled and annulled. That the holders of said bonds be and they are hereby permanently and forever restrained and enjoined from asserting any claim or demand whatsoever thereon as against petitioner district or its officers or against the property situated therein or the owners thereof.

4. That the new or Refunding Bonds of said district called "Second Refunding Issue" in the sum of $7,000,000.00 issued to effectuate the plan of composition approved in this cause, shall not in any way be adversely affected by these proceedings or by any order, judgment or decree made or entered herein.

5. That petitioner has made available within the time and manner prescribed by the interlocutory decree herein all money and consideration to be de-

livered to creditors under the plan of composition approved in said interlocutory decree and in full compliance with said interlocutory decree and Chapter IX of the Bankruptcy Act. That all acts and proceedings required to be taken by petitioner under the terms of the plan of composition approved in this cause and the interlocutory decree have been duly and regularly had and taken and petitioner has duly and regularly complied with all requirements of Chapter IX of the Bankruptcy Act of the United States and with all orders of the court pertaining to it herein. That said plan of composition is binding upon all creditors affected by it whether secured or unsecured and whether or not their claims have been filed or evidenced and if filed or evidenced whether or not allowed, including creditors who have not, as well [25] as those who have, accepted it.

Petitioner, Merced Irrigation District, is hereby discharged from all debts and liabilities dealt with in the plan of compositon approved in the interlocutory decree herein.

Dated: This .... day of ....., 1941.

.....

Judge.

[Endorsed]: Filed Feb. 25, 1947. [26]

[Title of District Court and Cause.]

## FINAL DECREE, DISCHARGE AND ORDER SETTLING REPORT AND ACCOUNT OF DISBURSING AGENT

The petition of Merced Irrigation District for Final Decree, Discharge and Order Settling Report and Account of Disbursing Agent came on duly and regularly to be heard on Friday the 11th day of July, 1941, at the hour of 10 o'clock A.M. in accordance with Order heretofore duly made herein setting said petition for hearing and it appearing that due and proper notice has been given in accordance with law and the order of court heretofore made herein of the hearing of said petition, and evidence both oral and documentary having been adduced and all persons interested having been heard in connection with said matter, and it further appearing that each and every, all and singular, the allegations of said petition are true; and it further appearing that all matters and things set forth in the report and account of E. E. Neel as [27] disbursing agent and which report was filed herein on June 2, 1941, are true and correct and that the said E. E. Neel has faithfully discharged all obligations as disbursing agent;

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That the receipts and disbursements by, and all other official acts of, E. E. Neel, as disbursing agent herein, be and the same are hereby approved

and confirmed and the duties of said E. E. Neel as disbursing agent are hereby terminated and his liability thereunder is forever discharged.

2. That the sum of $54,506.95 paid to the Clerk of this Court as Registrar herein by said disbursing agent be disbursed by the Registrar for the purposes of taking up and retiring, in accordance with the plan of composition approved in this cause, such remaining outstanding old obligations of petitioner as are affected by the plan of composition and which may be presented to the Registrar for that purpose. One year after date of entry of this decree and annually thereafter until otherwise ordered by the Court, Merced Irrigation District shall submit herein a report showing the obligations affected by the plan of composition which have been taken up at the composition rate during such year and the Registrar shall likewise, at least once a year, submit a similar report of bonds taken up and the balance, if any, of money remaining in his hands. If any money shall remain in the hands of the Registrar after petitioner claims that the Statute of Limitations applicable to its still outstanding obligations, if any, has run, petitioner may so report to this Court for such further action respecting said money remaining in the hands of the Registrar as this Court may determine to be proper and for the final closing of this proceeding. [28]

3. That except as provided in paragraph 2 hereof, all the old bonds and other obligations of petitioner affected by the plan of composition approved

herein whether heretofore surrendered and cancelled or remaining outstanding and by whomsoever held are hereby cancelled and annulled. That the holders of said bonds be and they are hereby permanently and forever restrained and enjoined from asserting any claim or demand whatsoever thereon as against petitioner district or its officers or against the property situated therein or the owners thereof.

4. That the new or Refunding Bonds of said district called "Second Refunding Issue" in the sum of $7,000,000.00 issued to effectuate the plan of composition approved in this cause, shall not in any way be adversely affected by these proceedings or by any order, judgment or decree made or entered herein.

5. That petitioner has made available within the time and manner prescribed by the interlocutory decree herein all money and consideration to be delivered to creditors under the plan of composition approved in said interlocutory decree and in full compliance with said interlocutory decree and Chapter IX of the Bankruptcy Act. That all acts and proceedings required to be taken by petitioner under the terms of the plan of composition approved in this cause and the interlocutory decree have been duly and regularly had and taken and petitioner has duly and regularly complied with all requirements of Chapter IX of the Bankruptcy Act of the United States and with all orders of the court pertaining to it herein. That said plan of composition is binding upon all creditors affected by it whether secured or unsecured and whether or not

their claims have been filed or evidenced and if filed or evidenced whether or not allowed, including creditors who have not, as well [29] as those who have, accepted it.

Petitioner, Merced Irrigation District, is hereby discharged from all debts and liabilities dealt with in the plan of composition approved in the interlocutory decree herein.

Dated: This 15th day of July, 1941, at 3:40 p.m.

/s/ PAUL J. McCORMICK,
Judge. [30]

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that J. R. Mason, creditor of Merced Irrigation District, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Final Decree, Discharge and Order Settling Report and Account of Disbursing Agent entered in this cause on July 15th, 1941, and from the whole thereof.

Dated: August 22, 1941.

/s/ PETER TUM SUDEN.

Mailed copy to Attorneys for Debtor 8/23/41.
E. L. S. [32]

[Endorsed]: Filed Aug. 23, 1941. [33].

[Title of District Court and Cause.]

## PETITION OF MERCED IRRIGATION DISTRICT

To the Honorable, the United States District Court, in and for the Southern District of California, Northern Division:

The petition of Merced Irrigation District respectfully shows:

I.

That heretofore, to-wit, on June 17, 1938, petition was filed by petitioner herein praying that an interlocutory decree be entered herein approving the plan of composition set forth in said petition under the provisions of the Bankruptcy Act of the United States relating to the composition of indebtedness of local taxing agencies (now designated as Chapter IX of the Bankruptcy Act of the United [34] States).

II.

That heretofore, to-wit, on the 21st day of February, 1939, after proceedings to that end duly had and taken, an interlocutory decree was duly made and entered herein confirming the plan of composition set forth in said petition, which said decree became final on the 10th day of February, 1941.

III.

That heretofore in accordance with said interlocutory decree, petitioner duly made available within

the time and in the manner set forth in said decree the sums necessary to be paid on outstanding bonds and coupons of said district pursuant to said decree and the plan of composition therein set forth, and that due notice to holders of outstanding bonds and coupons of petitioner was given for the time and in the manner and as directed by said interlocutory decree and in accordance with law.

IV.

That pursuant to said interlocutory decree, all bonds and coupons presented were duly taken up and discharged at the composition rate specified in said decree by E. E. Neel as disbursing agent under said decree for the period provided in said decree. That thereafter on June 2, 1941, as provided in said decree said disbursing agent did duly make and file herein a full and complete report giving an itemized statement of all receipts and disbursements made by him and including a list of old bonds and coupons still outstanding at the time of said report and not taken up and discharged. That said report showed an unexpended balance in the disbursing agent's hands of Fifty-four Thousand Five Hundred Six and 95/100 Dollars ($54,506.95) as the aggregate amount required to retire at the composition rate old bonds still outstanding plus [35] missing coupons. That said sum of Fifty-four Thousand Five Hundred Six and 95/100 Dollars ($54,506.95) was paid by said disbursing agent to the Clerk of this Court as Registrar contemporaneously with the filing of said account and report pursuant to

said interlocutory decree and that thereafter and after proceedings to that end duly had and taken on July 15, 1941, final decree, discharge and order settling report and account of disbursing agent were duly made and entered herein. That said final decree became final on the 9th day of November, 1942. That in and by said final decree it is provided as follows:

> "2. That the sum of $54,506.95 paid to the Clerk of this Court as Registrar herein by said disbursing agent be disbursed by the Registrar for the purpose of taking up and retiring, in accordance with the plan of composition approved in this cause, such remaining outstanding old obligations of petitioner as are affected by the plan of composition and which may be presented to the Registrar for that purpose. One year after date of entry of this decree and annually thereafter until otherwise ordered by the Court, Merced Irrigation District shall submit herein a report showing the obligations affected by the plan of composition which have been taken up at the composition rate during such year and the Registrar shall likewise, at least once a year, submit a similar report of bonds taken up and the balance, if any, of money remaining in his hands. If any money shall remain in the hands of the Registrar after petitioner claims that the Statute of Limitations applicable to its still outstanding obligations, if any, has run, petitioner may so report to this Court for such further action respecting

said money remaining in the hands of the Registrar as this Court may determine to be proper and for the final closing of this proceeding."

V.

That more than five (5) years have now elapsed since entry of said final decree and there still remains in the hands of the Clerk of this Court as Registrar the sum of Thirty-two Thousand Eight Hundred Eleven and 59/100 Dollars ($32,811.59) representing the unexpended balance of Fifty-four Thousand Five Hundred Six and 95/100 Dollars ($54,506.95) heretofore deposited, and that said unexpended balance represents the amount due under the [36] plan of composition on bonds and coupons which have not been presented to the Registrar.

Attached hereto and marked Exhibit "A" is a copy of the report of said Registrar last rendered, which report is dated July 15, 1946, and which shows the balance unexpended as hereinbefore set forth.

Attached hereto and marked Exhibit "B" is a copy of Report of Merced Irrigation District on Bonds Received from Registrar taken up under the composition plan dated July 23, 1946.

Attached hereto and marked Exhibit "C" is a statement showing the list of outstanding bonds and coupons of said Merced Irrigation District which have never been presented under said plan of composition.

VI.

That the funds to take up the bonds and coupons referred to in Exhibit "C" at the composition rate aforesaid have now been on deposit with the Registrar for over five (5) years. That said bonds and coupons listed in Exhibit "C" are barred by the statute of limitations and that pursuant to the provisions of the final decree above quoted, petitioner so reports to this Court. That all acts and proceedings required by petitioner have been duly and regularly taken and that the unexpended funds in the hands of the Registrar should now be returned to Petitioner and this proceeding finally terminated.

Wherefore, petitioner prays that the unexpended funds in the hands of the Registrar, to-wit, Thirty-two Thousand Eight Hundred Eleven and 59/100 Dollars ($32,811.59), be paid by said Registrar to petitioner and this proceeding finally terminated and closed.

Dated: July 24, 1946.

/s/ STEPHEN W. DOWNEY,
DOWNEY, BRAND &
SEYMOUR,
Attorneys for Petitioner. [37]

State of California,
County of Merced—ss.

H. P. Sargent, being first duly sworn, on oath deposes and says:

That he is an officer, to-wit, Secretary of Merced Irrigation District, the petitioner in the within

entitled proceeding and that he has read the foregoing and annexed petition and knows the contents thereof, and that the same is true of his own knowledge except as to such matters as are therein stated upon his information or belief, and as to those matters, that he believes it to be true.

That he makes this verification for and on behalf of said district and as such officer thereof.

/s/ H. P. SARGENT.

Subscribed and sworn to before me this 23rd day of July, 1946.

[Notarial Seal]

/s/ AURORA KREBS,

Notary Public in and for the County of Merced, State of California. [38]

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EXHIBIT "A"

Report of Registrar Pursuant to Final Decree July 15, 1946

In re Merced Irrigation District No. 4818-ND in Bankruptcy

| Bond No. | Cps. No. | Payee | Amount |
|---|---|---|---|
| 7743 | 21-27 | Charles S. Chandler | $515.01 |
| | | Total | $515.01 |
| | | Balance in Registry of Court 3/1/46 | $33,326.60 |
| | | Less Payment listed above 3/1/46 | 515.01 |
| | | Balance on hand in Registry of Court | $32,811.59 |

Dated: July 15, 1946.

EDMUND L. SMITH,
Registrar.

Filed July 22, 1946.

EDMUND L. SMITH,
Clerk,
By I. L. MACBETH,
Deputy Clerk. [39]

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EXHIBIT "B"

In the District Court of the United States for the Southern District of California
Northern Division

No. 4818 in Bankruptcy

In Proceedings for Confirmation of a Plan of Composition of Bond Indebtedness

In the Matter of

MERCED IRRIGATION DISTRICT,
Debtor.

REPORT OF MERCED IRRIGATION DISTRICT ON BONDS RECEIVED FROM REGISTRAR TAKEN UP UNDER THE COMPOSITION PLAN.

Pursuant to the terms and conditions of the final decree entered by this Court in the above entitled matter on the 15th day of July, 1941, the Merced

Irrigation District does, in accordance therewith, file this report, showing the total number of outstanding old obligations received from the Registrar of this Court for the period July 15, 1945, to July 15, 1946, and as hereafter listed which have been cancelled.

| | | |
|---|---|---|
| Balance held by Registrar of the Court July 15, 1945, to pay outstanding bonds and coupons per "Exhibit B" | | $33,326.60 |
| Bond No. 7743, Cps. No. 21-27 | $515.01 | 515.01 |
| Balance in Registry of Court | | $32,811.59 |

Dated this 23rd day of July, 1946.

MERCED IRRIGATION
DISTRICT,
By /s/ H. P. SARGENT,
Secretary. [40]

# EXHIBIT "C"

## List of Outstanding and Unpaid Merced Irrigation District Bonds as of July 15, 1946

| Bond Number | Date of Issue | Maturity | Par Value | Owner as Shown on Records of District | Address |
|---|---|---|---|---|---|
| 230 | 1/1/22 | 1935 | $ 1,000 | H. K. Busche | 335 Adeline St., Oakland, Calif. |
| 314 | 1/1/22 | 1936 | 1,000 | H. K. Busche | 335 Adeline St., Oakland, Calif. |
| 725 | 1/1/22 | 1941 | 1,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |
| 736 | 1/1/22 | 1941 | 1,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |
| 3026 to 3030, incl. | 1/1/22 | 1950 | 5,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 3888 to 3891, incl. | 1/1/22 | 1952 | 4,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |
| 3898 | 1/1/22 | 1952 | 1,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |
| 4219 | 1/1/22 | 1952 | 1,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 4998 to 4999, incl. | 1/1/22 | 1953 | 2,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 5612 to 5621, incl. | 1/1/22 | 1954 | 10,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 7106 to 7110, incl. | 1/1/22 | 1956 | 5,000 | H. K. Busche | 335 Adeline St., Oakland, Calif. |
| 9159 to 9161, incl. | 1/1/22 | 1959 | 3,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |

| Bond Number | Date of Issue | Maturity | Par Value | Owner as Shown on Records of District | Address |
|---|---|---|---|---|---|
| 10860 to 10866, incl. | 1/1/22 | 1961 | 7,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |
| 11281 to 11283, incl. | 1/1/22 | 1962 | 3,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 11297 | 1/1/22 | 1962 | 1,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 11387 to 11389, incl. | 1/1/22 | 1962 | 3,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 11843 to 11844, incl. | 1/1/22 | 1962 | 2,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 11847 to 11849, incl. | 1/1/22 | 1962 | 3,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 12088 | 1/1/22 | 1962 | 1,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| 12125 to 12126, incl. | 1/1/22 | 1962 | 2,000 | F. C. Busche | 335 Adeline St., Oakland, Calif. |
| B93 | 5/1/24 | 1940 | 1,000 | J. R. Mason | 1920 Lake St., San Francisco, Calif. |
| B95 | 5/1/24 | 1940 | 1,000 | Ownership Unknown | |
| B272 to B275, incl. | 5/1/24 | 1942 | 4,000 | H. K. Busche | 335 Adeline St., Oakland, Calif. |
| Total | | | $63,000 | | |

Statement of Missing Coupon Deductions Made by Reconstruction Finance Corporation from Purchase Price of Merced Irrigation District Bond Purchases and Deduction Made from Payment by Disbursing Agent.

Missing Coupons

| Bond No. | Coupon No. | Date of Maturity | Principal Amount | Amount Deducted |
|---|---|---|---|---|
| 4362 | 41 | 7/1/42 | $27.50 | $27.50 |
| 4443 | 23 | 7/1/33 | 27.50 | 12.31 |
| 4444 | 23 | 7/1/33 | 27.50 | 12.32 |
| 4445 | 23 | 7/1/33 | 27.50 | 12.32 |
| 4725 | 31 | 7/1/37 | 27.50 | 27.50 |
| 7211 | 41 | 7/1/42 | 30.00 | 30.00 |
| 7975 | 23 | 7/1/33 | 30.00 | 13.43 |
| 7976 | 23 | 7/1/33 | 30.00 | 13.43 |
| 8032 | 23 | 7/1/33 | 30.00 | 13.43 |
| 8554 | 41 | 7/1/42 | 30.00 | 30.00 |
| 10316 | 46 | 7/1/45 | 30.00 | 30.00 |
| 11264 | 24 | 1/1/34 | 30.00 | 13.43 |
| B1906 | 21 | 7/1/34 | 30.00 | 13.43 |
| | 22 | 1/1/35 | 30.00 | 30.00 |
| B1907 | 21 | 7/1/34 | 30.00 | 13.43 |
| | 22 | 1/1/35 | 30.00 | 30.00 |
| B1908 | 21 | 7/1/34 | 30.00 | 13.43 |
| | 22 | 1/1/35 | 30.00 | 30.00 |
| | Total | | | $365.96 |

[Endorsed]: Filed July 30, 1946. [42]

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[Title of District Court and Cause.]

ORDER

It Appearing that Merced Irrigation District has filed in the above entitled Court a petition

praying that all unexpended funds, deposited with said Court for the redemption at the composition rate of all outstanding bonds and coupons, be now refunded to the said District and that the above entitled proceeding be finally terminated and closed; and

It Further Appearing that there is unexpended and now remains in said fund the sum of Thirty-two Thousand Eight Hundred Eleven and 59/100 Dollars ($32,811.59);

It Is, Therefore, Ordered that hearing on said petition shall be held at ten o'clock, a. m., on the 29 day of October, 1946, before the undersigned, Judge of said Court. [43]

It Is Further Ordered that the Clerk of this Court sign the attached notice of said hearing, and that a copy of said notice shall thereupon be sent by registered mail to each person, shown in Exhibit "C" of said petition as the owner of any outstanding bond or bonds as shown on the records of the District, addressed to the address indicated for said person thereon, and also to any and all attorneys of record for said persons in this proceeding.

It Is Further Ordered That said notice shall be published in the following publications for two (2) successive issues thereof: Merced Sun Star; Wall Street Journal, Pacific Coast Edition.

It Is Ordered that said publication and mailing of notices shall be made by and at the expense of Merced Irrigation District.

Dated: August 20, 1946.

/s/ PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed Aug. 20, 1946. [44]

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[Title of District Court and Cause.]

NOTICE OF HEARING OF PETITION OF MERCED IRRIGATION DISTRICT PRAYING THAT ALL UNEXPENDED FUNDS DEPOSITED WITH THE ABOVE COURT FOR REDEMPTION OF OUTSTANDING BONDS AND COUPONS BE REFUNDED TO SAID DISTRICT AND THAT THE ABOVE PROCEEDING BE FINALLY TERMINATED.

To the Holders of All Outstanding Bonds and Coupons of Merced Irrigation District Affected by the Plan of Composition Heretofore Approved by This Court:

Notice Is Hereby Given that Merced Irrigation District has filed in the above proceeding a petition praying that all unexpended funds heretofore deposited with said Court for the redemption at the composition rate of all outstanding bonds and coupons be now refunded to the said District and that the above entitled proceeding be finally terminated and closed.

Notice Is Further Given that the 29th day of

October, [45] 1946, at 10 o'clock, a. m., of said day and the courtroom of the above Court, before the Honorable Paul J. McCormick, Judge thereof, in the City of Los Angeles, State of California, have been fixed as the time and place for the hearing of said petition when and where any person interested may appear and be heard with respect thereto.

Dated: August 20th, 1946.

/s/ EDMUND L. SMITH,
Clerk. [46]

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[Title of District Court and Cause.]

OBJECTIONS OF J. R. MASON (A CREDITOR) TO THE PETITION

To the Honorable, the United States District Court, in and for the Southern District of California, Northern Division:

J. R. Mason as a holder of certain bonded indebtedness of the Merced Irrigation District, and whose claim was duly filed in this proceeding, respectfully shows on his behalf, and on behalf of other creditors similarly interested:

I.

That the instant Petition, dated July 24, 1946, presents and gives rise to a distinct and separate cause of action ruled by State law, and which should have been addressed to a Court of California.

Ferris v. Prudence Realization Corp., 292 N. Y. 210, 54 N. E. 2d 367;

In re Prudence Bonds Corp., 57 F. Supp. 839;

Cobleigh v. State Land Board, 9 N. W. 2d 665;

Leco v. Crummer & Co., 128 F. 2nd 110;

Ware v. Crummer & Co., 128 F. 2d 114;

Seymour v. Wildgen, 137 F. 2d 160;

Green v. City of Stuart, 135 F. 2nd 33;

Spellings v. Dewey, 122 F 2nd 652. [47]

II.

The Petition fails to cite any statute, federal or state, or decision in support of the claim that "the State of Limitations applicable to its still outstanding bonds obligations" has run, and that claim is directly counter to the clear and unequivocal ruling by the Supreme Court of the State of California, in Moody v. Provident Irr. Dist., 12 Cal. 2d 389, where the Court said:

> "That the statute of limitations, under the circumstances disclosed by this case, could never be pleaded by the district until it had the money in its possession to pay the bonds belonging to plaintiffs, and had given notice, is supported by the case of Freehill v. Chamberlain, 65 Cal. 603."

See also, County of Lincoln v. Luning, 130 U. S. 529.

The bonds held by J. R. Mason do not even become lawfully due until 1961, and as to those bonds and coupons not lawfully due, no statute of limitations could apply by virtue of any statute known to this petitioner. All due bonds and coupons have been duly presented with demand for payment in accordance with the provisions in Sec. 52 (Stats. 1919, p. 667) of the Irrigation District Laws, which brings the claims that are past due within the rule laid down by the highest California Court, above quoted.

III.

Altho no claim is made that there is any statute of limitations applicable to the funds with the Registrar of the Court in this cause, and "To effect a forfeiture, which the law does not favor, the evidence must be clear and convincing and must not call upon a court of equity to do an inequitable thing" (Hendrix v. Altman Lbr. Co., 145 F. 2d 501, CCA 5), it is submitted that the Congress in Sec. 204 of the Chandler Act (11 U.S.C.A. § 604) did empower its Courts to "fix a time, to expire not sooner than 5 years after the final decree . . . within which . . . holders . . . shall present or surrender their securities." The complete omission of any such provision from the Statute upon which this proceeding is based (11 U.S.C.A. § 401-404, P.L. 481, Ch. 532, Stat. Sec. 13, as amended June 30, 1946) indicates that the Congress believed that the State law and decisions should be given full respect. [48]

The rules applying to the escheat of funds placed with the registrar of a Federal Court of Bankruptcy to pay minority creditors are reviewed at some length in

> Louisville & R.R. Co. v. Robbins, 135 F. 2d 704, CCA 5; In re Peyton Realty Co., 148 F. 2nd 771, CCA 3.

The instant petition makes no claim that there is any statute applicable to the funds on deposit with the Registrar, but only that there is some (unshown) "Statute of Limitations applicable to its still outstanding obligations."

The Supreme Court of California in Raisch v. Myers, 27 A. C. 27, at page 793 has ruled that California District bonds, even when outlawed by statute, are not as against the real property owner outlawed with regard to the proceeds of sale on foreclosure of a plaintiff's superior lien.

Also see Siwell & Co. v. County of Los Angeles, 160 Pac. 2d 789, affirmed in 27 Cal. (2d) 724 after a Rehearing.

IV.

It is further prayed that the restraint embodied in the decree of this Court "from asserting any claim or demand whatsoever thereon as against petitioner district . . ." be stricken from the decree, because this restraint is in legal and practical effect "An injunction restraining the collection of taxes in a state court—a stay not being authorized by any

law relating to Bankruptcy . . ." (Brick v. McColgan, 39 F. Supp. 358), and also because it is explicitly prohibited by sub (c) of 11 U.S.C.A. § 403; U.S.C. 28, § 41(1), sub (3); 11 U.S.C.A. § 1, secs. 14, 15. A restraining order can not validly be invoked to allow State or local public tax collecting officers or agencies "to do that which they are not authorized to do by the laws of the State."

U. S. v. Clark Co., 95 U. S. 769;

Huddleston v. Dwyer, 322 U. S. 232.

Merced Irrigation District is a creature of statute, which is a grant of power which the officers and creditors must both look entirely to for their authority and rights.

Meyerfeld v. San Joaquin I. D., 3 Calif. 2d 409. [49]

"Court which renders a final decree for a permanent injunction may open or modify decree where . . . conditions . . . make it just and equitable to do so."

Federal Land Bank v. Glendenning, 61 N. E. 2d 184;

Bekins v. Compton Delevan I. D., 150 F. 2d 526, CCA 9;

Hamaker v. Heffron, 148 F. 2d 981, CCA 9.

The Court may take judicial notice of the speculative boom in the price being demanded by taxpayers within Merced Irrigation District for land

titles since the reduction in the annual direct ad valorem land tax which was made possible by the voluntary acceptance by other bondholders of the cash offer for the original bonds made over 10 years ago. It is a novel condition when the holders of valid, binding and unpaid bonds of a State, or its taxing units, are restrained by federal decree from recourse to State Courts to seek an order to compel State tax officials to stop violating the Constitution and laws of the State.

Wherefore, petitioner respectfully submits that the bonds and past due coupons held by him, as listed in his proof of claim, are in no instance and under no law "barred by the Statute of Limitations," and prays that the funds now with the Registrar be not given to the Bankrupt who has no right to that money, and prays that the restraint referred to in paragraph IV be stricken from the decree, and that this Honorable Court leave to the Courts of California the matter of fixing the rights of the parties involved, and that the proceeding brought under 11 USCA 401-403 be terminated.

Dated: October 26, 1946.

/s/ J. R. MASON,
A Creditor, in Pro Se. [50]

United States of America,
Southern District of California,
Central Division—ss.

J. R. Mason being by me first duly sworn, deposes and says: that he is the objector in the above entitled action; that he has read the foregoing Objections and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ J. R. MASON.

Subscribed and sworn to before me this 26th day of October, 1946.

[Seal] /s/ ROSCOE R. HESS,
Notary Public in and for the County of Los Angeles, State of California. [51]

[Affidavit of service by mail attached.]

AFFIDAVIT OF PUBLICATION

In the District Court of the United States
for the Southern District of California
Northern Division

In Bankruptcy No. 4818

In Proceedings for Confirmation of a Plan of Composition of Bond Indebtedness

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

Notice of Hearing of Petition of Merced Irrigation District Praying That All Unexpended Funds Deposited with the Above Court for Redemption of Outstanding Bonds and Coupons Be Refunded to Said District and That the Above Proceeding Be Finally Terminated

To the Holders of All Outstanding Bonds and Coupons of Merced Irrigation District Affected by the Plan of Composition Heretofore Approved by This Court:

Notice Is Hereby Given that Merced Irrigation District has filed in the above proceeding a petition praying that all unexpended funds heretofore deposited with said Court for the redemption at the composition rate of all outstanding bonds and coupons be now refunded to the said District and that the above entitled proceeding be finally terminated and closed.

Notice Is Further Given that the 29th day of October, 1946, at 10:00 o'clock a.m. of said day and the courtroom of the above Court, before the Honorable Paul J. McCormick, Judge thereof, in the City of Los Angeles, State of California, have been fixed as the time and place for the hearing of said petition when and where any person interested may appear and be heard with respect thereto.

Dated: August 20, 1946.

EDMUND L. SMITH,
Clerk of the United States
District Court.

Legal 222, Sept. 26, 27; Oct. 2, 3, '46.

State of California,
County of Merced—ss.

Dean S. Lesher being duly sworn, deposes and says: That he is now, and at all times herein mentioned, has been, a resident of the City of Merced, Merced County, State of California, a citizen of the United States and State of California, over the age of 21 years, and in no way or manner interested in the subject of the annexed notice; that he is now, and at all times herein mentioned has been Publisher of the Merced Sun-Star; that said Merced Sun-Star is, and at all times herein mentioned was,

a daily newspaper of general circulation, printed and published at the City of Merced, Merced County, State of California; and that the said newspaper is now, and at all times herein mentioned has been, printed and published upon each and every afternoon, except Sundays and certain legal holidays.

That the Notice a copy of which is attached upon the left hand side of this page opposite to this affidavit, was printed and published in said newspaper and in every issue thereof from and including the 26th day of September, 1946, to and including the 3rd days of October, 1946, that is to say, said notice was published in the issues of said newspaper on the following dates:

In the issue of September 26, 1946;

In the issue of September 27, 1946;

In the issue of October 2, 1946;

In the issue of October 3, 1946.

/s/ DEAN S. LESHER.

Subscribed and sworn to before me, this 4th day of October, 1946.

/s/ JULIA CLUTANTE,

Notary Public in and for Merced County, State of California.

[Endorsed]: Filed Oct. 29, 1946. [53]

[Affidavit of publication of the Wall Street Journal attached.]

[Endorsed]: Filed Oct. 29, 1946. [54]

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[Affidavit of service by mail attached.]

[Endorsed]: Filed Oct. 29, 1946. [55]

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At a stated term, to-wit: The October Term, A.D. 1946, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 29th day of October in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Paul J. McCormick,
District Judge.

No. 4818-Bkcy

In the Matter of

MERCED IRRIGATION DISTRICT.

This matter coming on for hearing on petition of Merced Irrigation District for disbursement of funds, filed July 30, 1946, pursuant to notice of hearing filed August 20, 1946, and objections of J. R. Mason to said petition, filed October 28, 1946;

Stephen W. Downey and John Downey, Esqs., appearing for the Petitioner; J. R. Mason, a creditor, appearing in propria persona:

Attorney John Downey presents petition and argues in support thereof.

E. E. Neel is called, sworn, and testifies on examination by Attorney Downey.

Petitioner's Exhibits A, B, and C are admitted into evidence.

The witness leaves the stand to make certain calculations and Attorney John Downey argues further re the statute of limitations.

E. E. Neel resumes the stand and testifies further, and is withdrawn to make further calculations.

Attorney John Downey argues further. Attorney John Downey and Mr. Mason discuss a certain proposed stipulation re notice of the interlocutory and final decrees herein and of the deposit of the funds in the Registry of the Court, as reflected by the Court Reporter's notes.

E. E. Neel resumes the stand and testifies further.

Mr. Mason argues in opposition to the petition, and the Court discusses certain matters with Mr. Mason. The Court propounds a question to Mr. Mason as to whether he is willing to accept his money on the same parity as the other bondholders. Mr. Mason asks for 15 days' time to answer and the Court orders this matter continued to November 15, 1946, at 10 a.m., for further proceedings on this phase of the matter. [58]

Letterhead of Downey, Brand & Seymour

November 12, 1946

Honorable Paul J. McCormick
United States District Judge
Post Office Buiding
Los Angeles 12, California

Re: Merced Irrigation District
in Bankruptcy No. 4818

Dear Judge McCormick:

The hearing on the petition of Merced Irrigation District for refund of unexpended moneys in the above entitled matter will be further heard on November 15. It is our position that the court is now without jurisdiction to allow Mr. Mason to take the money is he now desires to do so. If the statute of limitations has run as we contend, the court would seem to have no jurisdiction except to order the money returned to the Irrigation District. General equity authority would not seem sufficient to override a substantive rule of law. Once an appropriate statute of limitations has run the obligation to pay the money (if any exists) is extinguished.

It is true that in the final decree the court said in effect that upon the expiration of the statute of limitations period the District might report back to the court for such action as the court deemed advisable. However, we do not make our case upon that order but upon statutory and substantive rules of law by virtue of which we claim that the court

cannot exercise discretion in the premises but can only apply the law as it exists. Moreover, the [66] position taken by Mr. Mason does not entitle him to the benefit of the equitable powers of the court even if such power now exists.

Regardless of whether Mr. Mason desires to surrender his bonds and accept the money or not, we respectfully request that at the hearing on November 15 we be permitted to answer Mr. Mason and argue the proposition presented in this letter.

Very truly yours,

DOWNEY, BRAND &
SEYMOUR,
By /s/ JOHN F. DOWNEY.

JFD:F

cc to Mr. J. R. Mason
1920 Lake Street
San Francisco, California. [67]

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At a stated term, to-wit: The October Term, A. D. 1946, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 15th day of November in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Paul J. McCormick,
District Judge.

No. 4818-Bkcy

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

This matter coming on for further hearing on Petition of Merced Irrigation District for disbursement of funds, filed July 30, 1946, pursuant to notice filed August 20, 1946, and on objections of J. R. Mason, filed October 28, 1946, thereto: Messrs Downey, Brand, and Seymour by Stephen M. Downey, Esq., appearing as counsel for the petitioner. J. R. Mason being present in propria persona; on motion of Attorney Downey and with consent of respondent J. R. Mason, it is ordered that the following documents be considered as evidence on this hearing: Interlocutory Decree, and appeal therefrom; Final Decree, and appeal therefrom; Objections of J. R. Mason to final decree; the herein petition; Order for Notice on this petition; Notice of hearing this petition; and Proposed Final Decree and objections thereto.

Attorney Downey and Respondent Mason argue, and it is ordered that the petition herein is denied; that the bonds now held and owned by Respondent Mason be deposited within ten (10) days from date of the Decree made pursuant to this hearing; that they will be deposited in full satisfaction under the

plan adopted and effectuated by this proceeding; at the expiration of 75 days from the date of entry of said decree, the Court will then consider further the disposition of the fund now in its Registry and also will further consider disposition of the bonds deposited in the registry; Decree to be prepared by Attorney Downey within ten (10) days from this date.

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[Title of District Court and Cause.]

ORDER

This cause came on to be heard on petition of Merced Irrigation District praying that unexpended funds deposited with this Court for the discharge of outstanding bonds and coupons at the composition rate in accordance with the interlocutory decree herein be refunded to said District and that the proceedings herein be finally terminated.

It Is Ordered that said petition be denied; that the bonds and coupons of J. R. Mason, effected by the plan of composition herein, be deposited by him with this Court within ten (10) days from the date hereof; that said deposited being made [69] and upon this order becoming final the said J. R. Mason shall receive in discharge of bonds and coupons so deposited, from the funds on deposit herein, such amount as is provided by the terms of the plan of composition approved in this matter; that upon this order becoming final this Court will further con-

sider the disposition of the bonds so deposited and of the remainder of the said fund then remaining in its registry.

Dated: November ....., 1946.

.....

Judge.

[Endorsed]: Filed Feb. 25, 1947. [70]

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[Title of District Court and Cause.]

## OBJECTIONS OF RESPONDENT TO ORDER PROPOSED BY PETITIONER

To the Honorable, the United States District Court, in and for the Southern District of California, Northern Division:

Respondent has received from Counsel for Petitioner a copy of the proposed order, which they report was mailed this Honorable Court on Nov. 18, 1946.

Respondent respectfully protests and duly objects to this proposed order, and requests that it be amended by striking everything in it, after the words "It is ordered that said petition be denied."

The Petition here involved prayed for one thing only, which was

> "that the unexpended funds in the hands of the registrar . . . be paid by said registrar to peti-

tioner and this proceeding finally terminated and closed."

Therefore because the prayer of respondent "that the petition be dismissed" prevailed, nothing contained in respondent's "Reply to outline of arguments of petitioner" is applicable, because it [71] provided that "Should this prayer be wholly denied . . .", and it is respondents position that his prayer was not "wholly denied".

That portion of the proposed order objected to above, would be, if sanctioned by this Court, beyond the scope of the instant petition, beyond the scope of the Final Decree which "became final November 9, 1942" as to petitioner, and without warrant of any law known to respondent or cited by petitioner.

A further objection is that it would be discriminatory, in that it singles out respondent and ignores the three other holders of "still outstanding" bonds, and so would violate the rule of equality requisite under law.

Respondent was, for many years, active in the profession of underwriting and distributing the obligations of States, Counties, Cities and Districts, as President of J. R. Mason & Co., San Francisco, and has never yet heard of any law enacted by the Congress or by the Legislature of any State making it unlawful to invest in and to hold any valid, binding and "still outstanding" bonds of a State or of its local units of government, protected by the Constitution.

Because Ch. IX (11 USCA 401-404) the base of this proceeding, is a special statute, explicitly limiting the jurisdiction granted, especially in Sec. 409(c), sub(a); 403(e), sub(6); 403(i); and also because of the limitation upon the jurisdiction allowed the Courts of Bankruptcy in 11 USCA §1, sub(14)(15); 11 USCA §1, §§107, sub.b.205; §§104 sub.a(4); 28 USCA §379; 28 USCA §41(1) sub(3); 40 USCA §258a; R.S. §720; 11 Am. Jur., Conflict of Laws §30, construed in Arkansas Corp. v. Thompson, 312 US 673 and further with respect of the scope of the federal power to execute a judgment against a local unit of government in Huddleson v. Dwyer, 322 US 233 it is respondents contention that this Court should stay its hand, and require the parties to litigate question of purely state law in the Court of California, as was ordered in the case of

Layton v. Thayne, Cir. 10, 144 Fed. 2d 94. (Cert. denied)

Seymour v. Wildgen, Cir. 10, 137 F. 2d 160.

In re Boylan, 65, F. Supp. 105. D.C.Pa. [72]

"The Circuit Court of Appeals will not pass on public policy involved in taxing statutes and will not mitigate the rigors of such statutes on the basis of economic hardship, and taxpayers must address their complaints as to such matters to Congress and not to the Courts."

Holmes and Son v. Comm. Cir.4, 155 Fed. 2d 155.

"An injunction restraining the collection of taxes in a State Court—a stay not being authorized by any law relating to bankruptcy, is prohibited by 265 Judicial Code, §28 USCA §379."

Brick v. McColgan, 39 F. Supp. 358.

"Federal Courts should scupulously confine their own jurisdiction to the precise limits which the Statute conferring jurisdiction has defined."

Hartford Accident Ins. Co., 39 F. Supp. 475.

Petitioner is a statutory trust, a land-tax collector which has been delegated taxing powers and fixed, continuing duties by the Constitution and laws of the sovereign State of California. Its powers and duties have been clearly and unequivocally interpreted and construed in the cases cited in respondents prior briefs, to which cases, the following may now be added:

In re Madera Irr. Dist. 92 Cal. 308;

Wores v. Imperial Irr. Dist. 227 Pac. 181 (Cal. Supreme Ct.);

Anderson Cottonwood ID v. Zinzer, 51 C.A. 2d 587, (Hearing denied by Cal. Supreme Court, June 25, 1942)

Oroville Wyandotte I.D. v. Ford, 47 C.A.2d 531;

Glenn Colusa Irr. Dist. v. Ohrt, 31 C.A.2d 619;

Tulare I.D. v. Shepard, 185 US 1.

Composition proceedings demand the utmost good faith of the debtor. Boas v. Bank of America N.T. & S. Assn, 51 C.A. 2d 592.

All property belonging to a California Irrigation District, including land acquired for unpaid taxes, is made immune from prescription, by the provisions in Civ. Code of Cal. §1007.

When a State Court has ruled on the rights in property of a Trustee (Petitioner is a trustee), the Bankruptcy Court is bound by the State Court decree.

Ohio Oil Co v. Thompson, 120 Fed. 2d 831.

> "Where the highest court of a State, in an appropriate action, has decided that taxes were properly assessed, and are legal and valid under the Constitution and laws of the State, a federal court will not entertain a suit to enjoin their collection."

Douglas County v. Stone, 191 US 557.

> "It has never been held that charges upon or estates in land created by the owner thereof can avail as against the taxing power of the Commonwealth. Municipal liens for grading and paving streets are a species of taxation and come within the rule. Such liens bind the entire estate in the land, except where an Act of Assembly directs otherwise. If it were not so, the owner of real estate could wholly defeat

the taxing power by charging it with the payment of a sum of money equal to its full value."

City of Erie (Pa.) v. Piece of Land, 14 Atl. 2d 428, 431.

See also,

Day v. Ostergard, 21 Atl.2d 586. (Pa. Sup. Ct.)

Spencer v. Merchant, 125 US 345, 352;

Murray v. Charleston, 96 US 432;

Perry v. City of Los Angeles, 187 Cal. 753;

Heine v. Board of Lev. Comm., 19 Wall (86 US) 665;

State v. Murray, 79 S.C. 330, 60 S.E. 933;

Ex parte Ayers, 123 US 443;

Ex parte Virginia, 100 US 339, 347.

"The levying of State taxes upon the title of private landholders . . . impairs the exercise of no federal function."

Petition of S.R.A. 18 N.W. 2d 442. Minn. Sup. Ct. Affirmed by Supreme Court of U.S. in S.R.A. v. Minnesota, 14 US LW 4269.

"If, however, the officer is merely a nominal defendant, and the State is the real party in interests (as here) then the suit is in substance one against the State and can not be maintained. (Citations) . . . Having held in the instant case that the suit is against (or by)

the State, the jurisdiction of the federal court must fail, even though the State of Arkansas had waived its immunity and consented to be sued." (Emphasis supplied)

Cargile v. N.Y. Trust Co., 67 Fed.2d 585.

"Legislature shall not pass any . . . laws . . . releasing or extinguishing in whole or in part, the indebtedness, liability or obligation of any corporation or person to this State, or to any municipal corporation therein."

California Constitution, Art. IV, §§25, sub. 16.

"The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation, whatever."

California Constitution, Art. 4, Sec. 31.

"These are not academic debating points or technical niceties. Those who have gone before us have admonished us that in a free representative government nothing is more fundamental than the right of the people . . . and that in our peculiar dual form of government nothing is more fundamental than the full power of the State to order its own affairs and govern its own people, except so far as the Federal Constitution expressly or by fair implication has withdrawn that power. The power of the people of the State to make and alter their

laws at pleasure is the greatest security for liberty and justice . . .

We are not invested with the jurisdiction to pass upon the expediency, wisdom or justice of the laws of the States as declared by their Courts, but only to determine their conformity with the Federal Constitution and the paramount laws enacted pursuant to it."

Twining v. New Jersey, 211 US 78, 106.

"Especial respect should be had to such decisions when the dispute arises out of general laws of a State, regulating its exercise of the taxing power, or relating to the State's disposition of its public lands."

Wilson v. Standifer, 184, US 399, 412.

"The necessity for recognizing and maintaining the Nation and each of the State Governments with its full constitutional power and right to function independently of and free from infringements, or burdens of the other can not be minimized or overlooked. When local government atrophies and the National reach grows stronger and more determined, decay begins. The perpetuity of our way rests upon the continuity of the blended, dual system."

First Nat. Bank, Gainesville, Tex. v. Thomas, 38 F. Supp. 849.

"The well settled principle of law is that jurisdiction of subject matter may not be con-

ferred upon a tribunal by consent. Nor can jurisdiction be construed to have been acquired by a Court because of the consent of one of the parties to a submission of litigation to the Court, when in fact and in law, the Court is without power to act. Since the jurisdiction of subject matter can not be conferred by consent, it can less so be acquired by inference . . . The Court not having jurisdiction of the subject matter, can not acquire jurisdiction of the persons. To bind persons, the Court must first obtain jurisdiction of the matter submitted to it."

Vaughan v. Vaughan, 35 NYS 2d 421.

"An Act which is valid on its face, may still, as applied to a particular state of facts, be invalid."

Nashville C.&St.L.Ry Co. v. Walters, 294 US 405.

It is settled that whenever jurisdiction is lacking, a Federal Court must sua sponte dismiss the cause.

Atlas Life Ins. v. Southern, 306 US 563.

"Ambiguous intimations of general phrases in opinions torn from the significance of concrete circumstances, or even occasional deviations over a long course of years, not unnatural in view of the confusing complexities of the tax problems, do not alter the limited nature of the function of this Court when State taxes come before it . . .

Nothing can be less helpful than for Courts to go beyond the extremely limited restrictions that the Constitution places upon the States and to inject themselves in a merely negative way into the delicate processes of fiscal policy making."

Wisconsin v. Penney, 311 US 435, 445.

The "still outstanding" bonds impose upon Petioner

". . . a plain official duty, requiring no exercise of discretion" and when "performance is refused, any person who will sustain injury by such refusal may have mandamus to compel its performance."

Board of Liquidation v. McComb, 92 US 531, 541.

"The scrupulous regard for the rightful independence of State governments which should at all times actuate the Federal Courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted Federal right may be preserved without it . . .

If the remedy at law is plain, adequate and complete, the aggrieved party is left to that remedy and in the State courts from which the

cause may be brought to this Court for review if any federal questions be involved."

Great Lakes Dredge & Dock Co. v. Huffman, 319 US 293.

Land holders may not get injunctions in a Federal Court to stop the enforcement of taxes on agricultural land.

Tuttle v. Bell, 377 Ill. 510, 37 N.E. 2d 180. Certiorari denied 315 US 815.

The rule is stated by Dobie on Federal Procedure, Sec. 16, p. 25;

"Every federal court is a court of limited jurisdiction. All presumptions are against the jurisdiction of such a court, so that the facts disclosing the jurisdiction must affirmatively appear upon the record. Jurisdiction can not be conferred by the mere consent of the parties, and the question of jurisdiction, whether or not raised by the parties, is always, during the progress of the case, before the federal courts, both trial and appellate."

It is submitted that the jurisdiction requisite to order respondent to now surrender the bonds does not "affirmatively appear upon the record", and hence that portion of the order should be stricken, as requested above, herein. [76]

Petitioner, in his letter of Nov. 12, 1946 to this Court, said:

"It is our position that the court is now without jurisdiction to allow Mr. Mason to

take the money if he now desires to do so . . . It is true that in the final decree the court said in effect that upon expiration of the statute of limitations (applicable to its still outstanding obligations) the District might report back to the court for such action as the court deemed advisable. However we do not make our case upon that order but upon statutory and substantive rules of law by virtue of which we claim that the court can not exercise discretion in the premises but can only apply the law as it exists." (The State law.)

Petitioner failed completely to cite any pertinent "law", or citations, and having failed to even try and question the ruling in Moody v. Provident I. D., 12 Cal. 2d 389 which made the statute wholly inapplicable to any of the bonds involved, and this Court having also announced that petitioner has no equities in the funds now in the registry of this Court, it is respectfully submitted that the petition failed, and that the petition having been denied, it should be dismissed, and the parties should be allowed to address any furthey question or dispute to the California Courts, freed from any injunction by this Honorable Court.

"The discharge of a bankrupt does not affect securities and they are subject to a judgment or decree in rem, but the creditor applying for such remedy may be required to await the re-

sult of the bankrupt's discharge if the bankrupt or assignee insists upon it."

Omaha US Employees Fed. Credit Union v. Brunson, 23 NW 2d 717.

Wherefore, respondent prays that all the language following "It is ordered that said petition be denied" in the proposed order be stricken, that the restraints in the final decree be lifted, on the ground that they are without warrant of law, and that the proceeding be dismissed. Should this prayer be denied, respondent requests the opportunity to present further argument, orally, before the proposed order is signed.

Dated: November 21, 1946.

/s/ J. R. MASON
a creditor, in Pro Se.

1920 Lake Street.
San Francisco, 21, Calif.

[Endorsed]: Filed Nov. 22, 1946. [77]

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At a stated term, to-wit: The September Term, A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Saturday, the 14th day of December, in the year

of our Lord, one thousand nine hundred and forty-six.

Present: The Honorable Paul J. McCormick, District Judge.

No. 4818-Bkcy

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

On the consideration of the proposed order relating to the action of the Court pursuant to proceedings of Nov. 15, 1946, and of the objections of respondent, J. R. Mason, to said proposed order filed herein Nov. 22, 1946, the Court is in doubt because of the statements in the last sentence of the objections of respondent to the order proposed by the petitioner as to the attitude and position of the respondent, J. R. Mason, and therefore, in order to finally and decisively ascertain the attitude of said respondent, J. R. Mason, and in conformity to his request in said objections of respondent to the order proposed by the petitioner, it is now ordered that the said respondent and petitioner Merced Irrigation District appear before this Court in court room No. 8, United States Post Office and Court House, Los Angeles, California, on Saturday, Dec. 28, 1946, at 10 o'clock a. m., for further and final proceedings in the matter of the petition of the Merced Irrigation District filed herein July

30, 1946. The clerk is directed this day to transmit notice hereof by U. S. mail to petitioner Merced Irrigation District and to the respondent J. R. Mason. [78]

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United States District Court
Office of the Clerk
Southern District of California
Los Angeles 12, California,

December 14, 1946

Stephen W. Downey, Esq.,
Downey, Brand & Seymour,
Attorneys at Law,
500 Capital National Bank Bldg.,
Sacramento, Calif.

Mr. J. R. Mason, 1920 Lake Street,
San Francisco 21, Calif.

Gentlemen:

RE: In the Matter of
MERCED IRRIGATION DISTRICT
No. 4818 Bkcy. N. D.

The Court has this day ordered that the above case be placed on the Calendar on Dec. 28, 1946, at 10 o'clock a. m., pursuant to order made this day, copy enclosed, and that the attorneys for the parties or you appear before the Honorable Judge Paul J. McCormick for hearing at that time.

/s/ EDMUND L. SMITH,
Clerk. [79]

At a stated term, to-wit: The October Term, A. D. 1946, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Saturday, the 28th day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Paul J. McCormick, District Judge.

No. 4818-Bkcy.

In the Matter of
MERCED IRRIGATION DISTRICT,
Debtor.

This matter coming on for further and final proceedings in the matter of the petition of the Merced Irrigation District, filed July 30, 1946, for distribution of unexpended funds in the hands of the Registrar, to petitioner, and for termination and closing of this proceeding; J. R. Mason, a creditor, objector, being present in propria persona; at 10:28 a. m. court convenes herein;

Stephen M. Downey, Esq., counsel for the petitioner, being absent, the Court is informed that Mr. Downey is delayed due to the train on which he is traveling to Los Angeles being late, and thereupon court recesses until Mr. Downey arrives.

At 10:58 a. m. court reconvenes herein and Attorney Downey and J. R. Mason being present, the Court refers to, and reads into the record from the

brief of Mr. Mason dated Nov. 21, 1946, and makes a statement to Mr. Mason. It is ordered to proceed with the argument.

Mr. Mason makes a statement and argues to the Court in opposition to the said petition filed July 30, 1946. At 11:55 a. m. Attorney Downey makes a statement and argues to the Court in support of the said petition and makes a suggestion to the Court as to further order herein. At noon Mr. Mason argues further in reply, and at 12:04 p. m. Attorney Downey argues further.

At 12:05 p. m. the Court makes a further statement and refers to the prior proceedings herein and the record and files in this matter, and gives its decision as follows:

It now appears that the Court misapprehended Mr. Mason's attitude in the premises and it now appears and the Court finds that the respondent Mason is not willing to comply with the suggested direction of the [80] Court as indicated by the record. The Court further concludes that laches have occurred and that there has also been sufficient time under any applicable statute of limitations for the determination of the amount remaining in this fund, the Court concluding that it has jurisdiction over its fund and it is the fund that is in question in this proceeding at this time, and would be inclined to the suggestion of counsel for the District in his desire to afford to those bondholders, including Mr. Mason, the proposed opportunity to share in this money in preference to the Merced Irriga-

tion District, but it must be done on the basis of the Court's direction and not upon any other theory. Apparently that is not satisfactory to Mr. Mason, so that counsel for the District will prepare an order along the lines suggested by him in his argument and present that for signature before December 31, 1946. Exception is allowed and noted for Mr. Mason.

Mr. Mason makes a further statement to the Court. [81]

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[Title of District Court and Cause.]

ORDER AND DECREE

After due notice given as required by order of this Court, the Petition of Merced Irrigation District Praying That Unexpended Funds Deposited With This Court for the Discharge of Outstanding Bonds and Coupons at the Composition Rate in Accordance With the Interlocutory Decree Herein Be Refunded to Said District came on regularly to be heard on the 29th day of October, 1946, Stephen W. Downey and John F. Downey appearing for petitioner; J. R. Mason, one of the holders of outstanding bonds and coupons effected by the plan of composition herein, appearing in propria personem; and no other appearances being made by or on behalf of any other interested party or parties; [82]

After proceedings thereon said matter was duly continued to, and further hearing thereon was had, on the 15th day of November, 1946; thereafter, and upon presentation of a proposed order upon said Petition, Objections to said proposed order were

filed by the said J. R. Mason; thereupon a hearing on said objections was regularly set for the 28th day of December, 1946, and after due notice thereof said objections were on said day duly heard and considered.

The Court, having fully considered said Petition and said Objections, and having heard evidence and argument thereon, and being fully advised in the premises, Now Finds:

That notice of hearing on said Petition and of hearing on said Objections was duly and regularly given in accordance with the Orders of this Court;

That all outstanding bonds and coupons of the above named Debtor effected by the plan of composition herein, and all claims of whatsoever nature based thereon, are now barred by the statutes of limitation applicable thereto and do not now constitute valid claims against said Debtor nor against said fund deposited by Debtor with this Court; that the owners and/or holders of said outstanding bonds and/or coupons are guilty of laches in the premises and are barred thereby and by applicable statutes of limitation from receiving any part of said fund on deposit herein and/or from asserting any claim whatsoever against said Debtor based on said bonds and/or coupons.

The Court Further Finds that it is nevertheless vested with equitable power and authority to authorize the owners of said bonds and coupons an additional period of forty-five (45) days from the date hereof within which to deposit said bonds and/or coupons with, and surrender said bonds

and/or coupons to this [83] Court and to thereupon receive from said fund deposited by Debtor herein payment therefor at the composition rate approved in this cause; and

The said Debtor having no objection to such authorization and procedure;

Now, Therefore, It Is Hereby Ordered and Decreed:

That Merced Irrigation District, the Debtor herein, is entitled to have refunded to it all moneys now remaining on deposit with this Court from the fund heretofore deposited herein by said Debtor for the discharge of its obligations in accordance with the interlocutory decree in this cause;

That the refund to said District of said moneys shall however be withheld for a period of forty-five (45) days from the date hereof; that during said period of forty-five (45) days the Clerk of this Court, as Registrar of said fund, shall pay therefrom to the owner or owners of bonds and/or coupons effected by the plan of composition herein who shall deposit said bonds and/or coupons with, and surrender the same to this Court during said forty-five (45) day period such amount as is provided by the terms of the interlocutory decree herein;

That upon the entry of this Order and Decree Merced Irrigation District shall cause true and correct copies thereof to be sent by registered mail to the following named persons at the addresses set opposite their respective names:

J. R. Mason, 1920 Lake Street, San Francisco, California;

H. K. Busche, 335 Adeline Street, Oakland, California;

F. C. Busche, 335 Adeline Street, Oakland, California;

and shall cause additional true and correct copies thereof to be [84] placed in the hands of the United States Marshal for the Northern District of California with instructions that he serve the same on the said H. K. Busche and the said F. C. Busche personally if such personal service thereof can be effected by him;

That upon the expiration of forty-five (45) days from the date hereof, and upon the filing with this Court by Merced Irrigation District of affidavits showing that the matters herein required of it to be done have been done, the Clerk of this Court, as Registrar of the said fund deposited herein by Debtor, shall deliver all moneys then remaining therein to Merced Irrigation District, and said District shall thereupon acquire full title thereto and ownership thereof;

That upon said moneys being so paid to Merced Irrigation District this proceeding shall become and be finally terminated and closed.

Dated: Dec. 31st, 1946.

/s/ PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed, judgment entered and docketed Dec. 31, 1946.

Notation made in Bankruptcy Docket on Dec. 31, 1946, pursuant to Rule 79(a), Civil Rules of Procedure. [85]

[Title of District Court and Cause.]

## OBJECTIONS BY RESPONDENT TO ORDER PROPOSED BY PETITIONER

To the Honorable, the United States District Court, in and for the Southern District of California, Northern Division:

Respondent received from Counsel for Petitioner copy of proposed order January 2, 1947, the original of which was mailed to the Court.

Respondent respectfully objects to this proposed order and to the proposed draft thereof in the following respects:

1. To all language that indicates that this Court found that any statute of limitations is applicable to the still outstanding obligations held by Respondent.

2. Objects to the proposed 45 day time limitation, or any other time limitation not allowed by applicable law, or by any provision in the Final Decree of Nov. 9, 1942.

3. Objects to the proposed order to give the money now in registry of this Court to Petitioner, because it never did and does not, and will not belong to Petitioner. [86]

Respondent respectfully submits that Petitioner at no point in the proceeding cited any law or case even pretending to modify the inapplicability of any statute of limitations to the bonds and defaulted coupons held by respondent, as construed and applied by the highest State Court in Moody v. Provident I. D., 12 C. 2d 389.

The proposed order cites no case, or precedent for any contrary ruling with regard to the only question raised in the Petition.

Respondent again respectfully invites the Court's consideration of the arguments and citations in this regard, presented in his briefs of October 26, 1946, November 12, 1946, and Nov. 21, 1946, and the complete silence about it, in briefs of Petitioner.

The proposed decree finding respondent guilty of laches is objected to, because petitioner made no such point at any stage of the proceeding, having instead vigorously contended that "the court can not exercise discretion in the premises but can only apply the law as it exists." (Letter to Court, dated Nov. 12, 1946.)

Petitioner has shown no right, title or interest in or to any of the funds in the Registry of this Court. The Court above, in Bekins v. Compton Delevan I. D., 150 Fed. 2d 526, held squarely that similarly deposited funds are the property of the bond holders, and not at all the property of the bankrupt.

In its Petition to the Supreme Court of the U. S. the Compton Delevan District said: "The Appellate Court states that the money represented in the composition figure which would have been paid to the respondent if their bonds had been presented is really the property of respondent and not of the petitioner; this is an erroneous conclusion." But Certiorari was denied by the Court.

Disbursement of funds in the Registry of the Court in these cases is governed by Title 28 of Judi-

cial Code, Sec. 851, 852, and the proposed order, if signed would clearly appear to be contrary to its explicit provisions. Petitioner has claimed no loss because respondent has not drawn down the money in the Court's Registry. [87]

With regard to whether the Courts are authorized, in proceedings arising under Ch. IX of the Bankruptcy Act, to exercise equitable powers in matters otherwise settled by the laws and decisions of the State and its highest Courts, the rulings in the following cases may prove relevant and helpful to this Court:

> Spellings v. Dewey, 122 Fed. 2d 652;
> Ware v. Crummer & Co., 128 Fed. 2d 114;
> Green v. City of Stuart, 135 F. 2d 33.

In Faitoute v. Asbury Park, 316 U. S. 502, 508, 509, the Court said in answering the contention that the Federal Ch. IX is supreme, said:

> "Can it be that a power that was not recognized until 1938, and when so recognized, was carefully circumscribed to reserve full freedom to the States, has now been completely absorbed by the federal government. . . . We think not."

The late Pres. Roosevelt said in 1937:

> "* * * it was clear to the framers of our Constitution that the greatest possible liberty—of self government—must be given to each state, and that any national administration attempting to make all laws for the whole nation * * *

would inevitably result at some future time in a dissolution of the Union itself." (N. Y. Times, Sept. 17, 1937, page 24.)

In U. S. v. Bekins, 304 U. S. 27, which held Ch. IX "not unconstitutional," the Court stressed the condition embodied in that statute, that a petitioner must be "authorized by law to take all action necessary to be taken by it to carry out the plan," and made it clear that such action must be authorized by State law.

Petitioner having failed to cite the necessary State law, upon which the proposed order could validly rest, and this Court having no summary jurisdiction in a Ch. IX proceeding, respondent prays that the funds in the Registry of this Court be disbursed only as provided by Sec. 851, 852, supra, that the petition filed July 24, 1946, be denied, and the claims be adjudicated by the State Court.

Dated January 2, 1947.

/s/ J. R. MASON,
a Creditor, in Pro Se.,
1920 Lake St.,
San Francisco 21,,
348 W. Calif. St.,
Pasadena 2, Cal.

The foregoing objections are considered and determined to be without merit under applicable and appropriate procedure herein.

PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed Jan. 3, 1947. [88]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that J. R. Mason, one of the creditors of Merced Irrigation District and respondent in this cause, does appeal to the Circuit Court of Appeals of the United States in and for the Ninth Circuit from the Order and Decree entered in this action December 31, 1946, and from the whole thereof, the same being an Order and Decree entered after the Final Decree dated July 15, 1941.

Dated: January 22, 1947.

/s/ J. R. MASON,
In Propria Persona. [89]

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[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents: That we, J. R. Mason, Appellant named in the Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, dated Jan. 22, 1947, as Principal, and American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, and authorized to transact business in the State of California, as Surety, are held and firmly bound unto Merced Irrigation District, and to the United States of America, and to the Clerk of said Court, in the full and just sum

of Two Hundred Fifty & 00/100 Dollars ($250.00), to be paid to them and/or to each and/or to all or any of them, and his or their respective successors, if any, as their respective rights may appear, in the aggregate amount of $250.00, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of January, 1947.

Whereas the above named principal has or is about to file a notice of appeal and take an appeal in said matter from the order and decree entered December 31, 1946, which decree was entered after Final Decree, in this same cause, dated July 15, 1941, which became final Nov. 9, 1942, to the Circuit Court of Appeals of the United States for the Ninth Circuit and files herewith his said Notice of Appeal.

Now, Therefore, the condition of the above obligation is such, That if the said Principal shall prosecute his said appeal to effect and answer all costs, if he shall fail to make his plea good, then this obligation to be void; otherwise to remain in full force and effect.

It is further stipulated as a part of the foregoing bond, that in case of the breach of any condition thereof, the above named District Court may, upon notice to the Surety, above-named, proceed summarily in said action or suit to ascertain the amount which said Surety is bound to pay on account of

such breach, and render judgment therefor against said surety and award execution therefor.

/s/ J. R. MASON,
AMERICAN SURETY
COMPANY OF NEW YORK,
By: /s/ D. B. Sperry,
Resident Vice-President.

Attest: /s/ M. L. CRUMMEY,
Resident Asst. Secretary.

Bond No. 35-470-095
Premium $10.00 per annum. [90]

State of California,
City and County of San Francisco—ss.

On this 14th day of January, in the year one thousand nine hundred and forty-seven, before me, Jane M. Dougherty, a Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared B. D. Sperry and M. L. Crummey, known to me to be the Resident Vice-President and Resident Assistant Secretary respectively of the American Surety Company of New York, the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the

said City and County of San Francisco, the day and year in this certificate first above written.

/s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 24, 1949.

[Endorsed]: Filed Jan. 22, 1947. [91]

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[Title of District Court and Cause.]

ORDER

It appearing that an appeal has been taken by J. R. Mason, upon his application a stay of execution of the order by this Court dated Dec. 31, 1946, is hereby granted pending appeal and until forty-five days (45 days) after the coming down of the Final Mandate of the Appellate Court, unless otherwise ordered prior to said time.

Dated: Jan. 22, '47.

/s/ PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed Jan. 22, 1947. [92]

[Title of District Court and Cause.]

## STATEMENT OF POINTS ON APPEAL

1. The Order and Decree that the claims of J. R. Mason are barred by the Statute of Limitations applicable to the still outstanding obligations of Merced Irrigation District is an error of law.

2. The Court erred in ruling that any of the bonds or coupons owned by J. R. Mason are outlawed, because some are not yet due or lawfully payable, and because those which are past due were all duly presented for payment, and are thus brought under the provisions of Sec. 52 of the Irrigation District Act, and are not subject to the Statute of Limitations otherwise applicable to past due claims.

3. The doctrine of laches is inapplicable in the absence of any showing of injury. No such showing appears, and this part of the Order and Decree entered Dec. 31, 1946, is an error of law.

4. The Final Decree was entered July 15, 1941, and became final Nov. 9, 1942. The Order here involved, was entered Dec. 31, 1946, pursuant to petition filed by the bankrupt July 24, 1946. The instant decree prescribes new provisions with respect to laches, not requested in the petition of July 24, 1946, not authorized by 11 USCA 401-403, or any Federal or State law cited, and is an error of law.

5. Because the bankrupt is not authorized to call, redeem or pay its bonds or coupons before

their fixed due dates, or for less than the sums promised in the bonds and statutes on which they are based, the Order and Decree allowing J. R. Mason and the other holders of "still outstanding obligations" 45 days within which to surrender their valid, binding and unpaid bonds at 50% of bond principle, with nothing for defaulted interest from 1932, or suffer a complete loss and to forever get nothing, is arbitrary, without warrant of law, and it contravenes the explicit limitation in Sec. 403 (e) sub (6) against decrees unless the petitioner "is authorized by law to take all action necessary to be taken by it to carry out the plan."

6. The Court erred in failing to lift the restraints in the Final Decree, as requested, which restraint has the force and effect of permitting Public tax officials of California to violate the Constitution and laws of California applicable under Deerings Gen. Laws, Act 3854, p. 1792, in that it releases them from the performance of mandatory taxing duties, as construed by the highest State Court, and also by the Supreme Court of the U. S. For these reasons the Decree contravenes 28 USC 41 (1), sub (3) (4); 11 USCA 1, Sec. 14, 15; 28 USCA 379; and violates the vested rights of J. R. Mason in the bonds affected by the Decree, which are secured by Art. I, sec. 16; Art. IV, sec. 1, 31; Art. X, sec. 5; Art. XIII, sec. 6 of the California Constitution, and by Art. I, sec. 10, cl.1, and the 5th and 14th Amendments to the U. S. Constitution. [93]

7. The Court erred in ordering the funds originally placed in the registry of the Court to pay "the

holders of such bonds in accordance with said Interlocutory Decree," given to the bankrupt unless withdrawn by the holders of still outstanding bonds within 45 days. No showing was made that the bankrupt has any right, title or interest in or to any of this fund, the disbursement of which is governed by the provisions in Title 28 of the Judicial Code, Sec. 851, 852. No time limitation is provided in these sections of Judicial Code within which lawful claims may be presented and get paid.

8. The District Court, after the Final Decree had become final, is not authorized in proceedings under 11 USCA 401-403 to make any additions to its substantive provisions, and was without jurisdiction to enter the Order and Decree of Dec. 31, 1946, unless the Statute of Limitations applicable to the still outstanding bonds and coupons held by J. R. Mason and others had run, as a matter of law.

9. The Court erred in entering the order, because it has the force and effect of unlawfully giving abatement from mandatory taxation to private holders of land titles, and allowing them to retain the land titles in violation of State law and decisions of the highest State Court, and of the Supreme Court of the U. S. The effect of the decree is to enable tax evading and tax avoiding holders of land to unlawfully reap unearned increment, at the expense of the holders of still outstanding bonds, and with no benefit to the common good.

10. Merced Irrigation District is a political subdivision of the State of California, to which the

State has delegated its sovereign power to lay and enforce direct ad-valorem taxes on the land within its boundaries, without limitation as to rate or time, and whose fiscal affairs, obligations and responsibilities are ruled by California laws, exclusively.

11. J. R. Mason is a holder of valid, binding and unpaid original "still outstanding" bonds and coupons issued by Merced Irrigation District, whose vested rights as a bondholder are governed by State law and decisions, and are secured against impairment by Art. 1, sec. 10, cl.1 and the Fifth and Fourteenth Amendments to the U. S. Constitution.

12. The principle of Constitutional law that the fiscal affairs of a State, and of its taxing instrumentalities, are immune from federal interference was not reversed in U. S. v. Bekins, 304 US 27, or in any other decision by the Supreme Court of the U.S.

/s/ J. R. MASON,
In Propria Persona.

(Affidavit of service by mail attached.)

[Endorsed]: Filed Jan. 22, 1947. [94]

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[Title of District Court and Cause.]

## DESIGNATION OF CONTENTS OF RECORD ON APPEAL

The appellant designates the following as those parts of the record on appeal as necessary for the

consideration of the points upon which the appellant intends to rely in this appeal.

1. Those portions of the record in this cause which were transmitted by the Clerk of this Court to the Clerk of the Circuit Court of Appeals of the Ninth Circuit and printed by said Clerk in the cases of the appeals entitled, "West Coast Life Ins. Co. v. Merced Irr. Dist.", No. 9242, in the U. S. Circuit Court of Appeals of the Ninth Circuit, and also in the case of "J. R. Mason v. Merced Irr. Dist.", No. 9955, in the U. S. Circuit Court of Appeals of the Ninth Circuit.

2. Petition of Merced Irrigation District, dated July 24, 1946.

3. Notice of Hearing, dated Aug. 20, 1946.

4. Communication dated Nov. 12, 1946, to the U. S. District Court, signed by Downey, Brand & Seymour, as counsel for bankrupt.

5. Entry #537 in Minute Book, Vol. 6, of U. S. District Court (No. Div.) of order by the Court on Nov. 15, 1946.

6. Notice of Hearing on Dec. 28, 1946, issued by the Court Dec. 14th.

7. Reporter's Transcript of Proceedings of Nov. 15 and Dec. 28, 1946, (partial).

8. Order and Decree, entered Dec. 31, 1946.

9. Statement of Points on Appeal.

10. Notice of Appeal.

11. Bond for Costs on Appeal.

/s/ J. R. MASON,
In Pro. Se.

[Endorsed]: Filed Jan. 22, 1947. [96]

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[Title of District Court and Cause.]

## AFFIDAVIT OF COMPLIANCE BY MERCED IRRIGATION DISTRICT WITH REQUIREMENTS OF ORDER AND DECREE

State of California,
County of Sacramento—ss.

John F. Downey, being first duly sworn, deposes and says:

That he is one of the attorneys for Merced Irrigation District, the debtor above named; that Merced Irrigation District has complied with all of the requirements of the Order and Decree of December 31, 1946, herein, as hereinafter set forth.

That on the 2nd day of January, 1947, affiant sent true and correct copies of said Order and Decree by registered mail to the following named persons at the addresses set opposite [97] their respective names:

J. R. Mason, 1920 Lake Street, San Francisco, California.

H. K. Busche, 335 Adeline Street, Oakland, California.

F. C. Busche, 335 Adeline Street, Oakland, California.

That affiant also placed true and correct copies of said Order and Decree in the hands of the United States Marshal for the Northern District of California, with instructions that he serve the same on the said H. K. Busche and the said F. C. Busche personally.

That affiant is advised by said Marshal that said service was made as directed; that affiant is further advised by the Clerk of the above Court that the said Marshal has filed herein a return of service of said Order and Decree stating that a true copy thereof was personally served on H. K. Busche on January 13, 1947, and that a true copy thereof was personally served on F. C. Busche on January 13, 1947.

That Merced Irrigation District has in every way fully performed all of the matters required of it as set forth in said Order and Decree of December 31, 1946.

Dated: January 25, 1947.

/s/ JOHN F. DOWNEY.

Subscribed and sworn to before me this 25th day of January, 1947.

[Seal] RUTH NORRIS,
Notary Public in and for the County of Sacramento, State of California.

[Endorsed]: Filed Jan. 30, 1947. [98]

[Title of District Court and Cause.]

ORDER AND DECREE

After due notice given as required by order of this Court, the Petition of Merced Irrigation District praying that unexpended funds deposited with this Court for the discharge of outstanding bonds and coupons at the composition rate in accordance with the Interlocutory Decree herein be refunded to said District came on regularly to be heard on the 29th day of October, 1946, Stephen W. Downey and John F. Downey appearing for Petitioner; J. R. Mason, one of the holders of outstanding bonds and coupons effected by the plan of composition herein, appearing in propria personem; and no other appearances being made by or on behalf of any other interested party or parties; [99]

After proceedings thereon said matter was duly continued to, and further hearing thereon was had, on the 15th day of November, 1946; thereafter, and upon presentation of a proposed order upon said Petition, Objections to said proposed order were filed by the said J. R. Mason; thereupon a hearing on said Objections was regularly set for the 28th day of December, 1946, and after due notice thereof said Objections were on said day duly heard and considered.

The Court, having fully considered said Petition and said Objections, and having heard evidence and argument thereon, and being fully advised in the premises, Now Finds:

That notice of hearing on said Petition and of hearing on said Objections was duly and regularly given in accordance with the Orders of this Court;

That all outstanding bonds and coupons of the above named Debtor effected by the plan of composition herein, and all claims of whatsoever nature based thereon, are now barred by the statutes of limitation applicable thereto and do not now constitute valid claims against said Debtor nor against said fund deposited by Debtor with this Court; that the owners and/or holders of said outstanding bonds and/or coupons are guilty of laches in the premises and are barred thereby and by applicable statutes of limitation from receiving any part of said fund on deposit herein and/or from asserting any claim whatsoever against said Debtor based on said bonds and/or coupons.

The Court Further Finds that it is nevertheless vested with equitable power and authority to authorize the owners of said bonds and coupons an additional period of forty-five (45) days from the date hereof within which to deposit said bonds and/or coupons with, and surrender said bonds and/or coupons to this [100] Court and to thereupon receive from said fund deposited by Debtor herein payment therefor at the composition rate approved in this cause; and

The said Debtor having no objection to such authorization and procedure:

Now, Therefore, It Is Hereby Ordered and Decreed:

That Merced Irrigation District, the Debtor herein, is entitled to have refunded to it all moneys now remaining on deposit with this Court from the fund heretofore deposited herein by said Debtor for the discharge of its obligations in accordance with the interlocutory decree in this cause;

That the refund to said District of said moneys shall, however, be withheld for a period of forty-five (45) days from the date hereof; that during said period of forty-five (45) days the Clerk of this Court, as Registrar of said fund, shall pay therefrom to the owner or owners of bonds and/or coupons effected by the plan of composition herein who shall deposit said bonds and/or coupons with, and surrender the same to this Court during said forty-five (45) day period such amount as is provided by the terms of the interlocutory decree herein;

That upon the entry of this Order and Decree Merced Irrigation District shall cause true and correct copies thereof to be sent by registered mail to the following named persons at the addresses set opposite their respective names:

J. R. Mason, 1920 Lake Street, San Francisco, California.

H. K. Busche, 335 Adeline Street, Oakland, California.

F. C. Busche, 335 Adeline Street, Oakland, California.

and shall cause additional true and correct copies thereof to be [101] placed in the hands of the United States Marshal for the Northern District of California with instructions that he serve the same on the said H. K. Busche and the said F. C. Busche personally if such personal service thereof can be effected by him:

That upon the expiration of forty-five (45) days from the date hereof, and upon the filing with this Court by Merced Irrigation District of affidavits showing that the matters herein required of it to be done have been done, the Clerk of this Court, as Registrar of the said fund deposited herein by Debtor, shall deliver all moneys then remaining therein to Merced Irrigation District, and said District shall thereupon acquire full title thereto and ownership thereof;

That upon said moneys being so paid to Merced Irrigation District this proceeding shall become and be finally finally terminated and closed.

Dated: Dec. 31, 1946.

PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed. Judgment entered Dec. 31, 1946. Docketed Dec. 31, 1946. Book 3, Page 413.

Notation made in Bankruptcy Docket on Dec. 31, 1946, pursuant to Rule 79 (a) Civil Rules of Procedure. Edmund L. Smith, Clerk, U. S. District Court, Southern District of California. By B. B. Hansen, Deputy.

A true copy.

Attest, etc. Edmund L. Smith, Clerk U. S. District Court, Southern District of California. By F. Betz, Deputy. Dec. 31, 1946.

RETURN ON SERVICE OF WRIT

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Order and Decree on the therein-named F. C. Busche by handing to and leaving a true and correct copy thereof with F. C. Busche personally at Oakland, Calif., in said District on the 13th day of January, 1947.

GEORGE VICE,
U. S. Marshal.
By /s/ R. CALMES,
Deputy.

[Endorsed]: Filed Jan. 22, 1947. [103]

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United States Marshal's Office
Northern District of California

I Hereby Certify and Return, that I received the within writ on the 13th day of January, 1947, and personally served the same on the 13th day of January, 1947, on H. K. Busche, whose true name is A. K. Busche, by delivering to and leaving with F. C. Busche, her husband, an adult person, who is

a member or resident in the family of H. K. Busche, whose true name is A. K. Busche, said defendant named therein, at the City of Oakland, County of Alameda, Calif., in said District, an attested copy thereof, at the dwelling house or usual place of abode of said H. K. Busche, whose true name is A. K. Busche, one of said defendants herein.

GEORGE VICE,
U. S. Marshal.
By /s/ RAYMOND A. CALMES,
Deputy.

San Francisco, Calif., Jan. 13, 1947.

[Endorsed]: Filed Jan. 22, 1947. [104]

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[Title of District Court and Cause.]

## APPELLANT'S FURTHER DESIGNATION OF PORTION OF RECORD ON APPEAL

Whereas Appellee has designated certain additional Portions of the Record, to be printed, Appellant now designates the following additional portions of the Record as necessary:

1. Objections of J. R. Mason, dated October 26, 1946, Nov. 12, 1946, Nov. 21, 1946, and January 2, 1947.

2. Proposed Order, prepared by Appellee, pursuant to Nov. 15th proceeding, but which order was not signed by the Court. This proposed order was submitted to the Court Nov. 18, 1946.

Dated January 19, 1947.

/s/ J. R. MASON,
Appellant in Pro Se.

[Endorsed]: Filed Feb. 19, 1947. [110]

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[Title of District Court and Cause.]

## STIPULATION

For the purpose of avoiding unnecessary cost in the matter of the Appeal by J. R. Mason, from the judgment against him, dated December 31, 1946, in the above entitled cause, it is stipulated that with the approval of the Circuit Court of Appeals of the U. S., for the Ninth Circuit, the record in the above cause printed by said Clerk in the cases of the appeals entitled "West Coast Life Ins. Co. v. Merced I. D. No. 9242," in the U. S. Circuit Court of Appeals for the Ninth Circuit, and also in the case of "J. R. Mason v. Merced I. D., No. 9955", in the Circuit Court of Appeals for the Ninth Circuit may be referred to or read from by either party to the appeal in this cause, insofar as the same may be relevant and material, with like effect as if the said record of the prior causes were embraced in the transcript in the appeal from said order of December 31, 1946.

Dated February 17, 1947.

DOWNEY, BRAND AND SEYMOUR,
Attorneys for Merced Irrigation District.

/s/ J. R. MASON,
Appellant in Pro Se.

[Endorsed]: Filed Feb. 25, 1947. [111]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 111, inclusive, contain full, true and correct copies of Interlocutory Decree; Notice of Appeal from Interlocutory Decree; Objections to Proposed Final Decree; Proposed Final Decree, Discharge and Order Settling Report and Account of Disbursing Agent; Final Decree, Discharge and Order Settling Report and Account of Disbursing Agent; Notice of Appeal from Final Decree, etc., filed July 15, 1941; Petition of Merced Irrigation District filed July 30, 1946; Order Fixing October 29, 1946, for hearing Petition; Notice of Hearing of Petition of Merced Irrigation District, etc.; Objections of J. R. Mason to the Petition filed October 25, 1946; Affidavits of Publication in Merced Sun-Star and The Wall Street Journal;

Affidavit of Mailing of Notice of Hearing, etc.; Minute Ordered Entered October 29, 1946; Respondent's Reply to "Outline of Argument of Petitioner"; Letter dated November 12, 1946, to Honorable Paul J. McCormick from Downey, Brand & Seymour; Minute Order Entered November 15, 1946; Proposed Order dated November ...., 1946; Objections of Respondent to Order Proposed by Petitioner filed Nov. 22, 1946; Minute Order Entered December 14, 1946; Notice of Hearing to be held on December 28, 1946; Minute Ordered Entered December 28, 1946; Order and Decree filed and entered December 31, 1946; Objections by Respondent to Order Proposed by Petitioner filed January 3, 1947; Notice of Appeal from Order and Decree filed December 31, 1946; Bond for Costs on Appeal; Order Staying execution; Statement of Points on Appeal; Appellant's Designation of Contents of Record on Appeal; Affidavit of Compliance by Merced Irrigation District with Requirements of Order and Decree; Marshal's Return of Service of Order and Decree; Appellee's Designation of Portions of Record; Appellee's Further Designation of Portions of Record; Appellant's Further Designation of Portions of Record and Stipulation re Records on Previous Appeals which, together with copy of Reporter's Transcript of Proceedings on October 29, November 15 and December 28, 1946, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing,

comparing, correcting and certifying the foregoing record amount to $33.55 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 27th day of February, A.D. 1947.

[Seal] EDMUND L. SMITH,
Clerk.
By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

[Title of District Court and Cause.]

## REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Tuesday, October 29, 1946. 10 A.M.

The Clerk: No. 4818-Bankruptcy, In the Matter of the Merced Irrigation District.

The Court: Proceed, gentlemen.

Mr. John F. Downey: If it please the court: This is the petition of the Merced Irrigation District in this matter, praying that the unexpended funds now on deposit with this court for redemption of bonds at the composition rate, as heretofore decreed, be now refunded to the district, in that they are still unexpended, and that the proceedings now be finally terminated.

There are certain facts that appear in the record, dates, and so forth, which I am going to be constantly referring to, and I have prepared an outline of the argument which I am going to make, which I think the court might wish to refer to.

The Court: Did you give counsel on the other side a copy of it?

Mr. John F. Downey: Mr. Mason has a copy of it, yes, your Honor.

The facts in this matter, as appear in the record, are that in 1938 a petition was filed by the District for the composition of its debts. After hearings on this petition an interlocutory decree was made on February 21, 1939, in which it was provided that

the bonds of the debtor be [2*] discharged at about 51 cents on the dollar. Appeals were taken from this interlocutory decree, and it eventually became final on February 10, 1941.

Shortly thereafter, in accordance with the terms of the decree, the money was made available through a disbursing agent for the payment of these bonds at the composition rate. That was on April 1, 1941. The money was in the hands of this disbursing agent for a period of two months, and then, as provided by the decree, was deposited with this court for the further redemption of bonds that would be turned in. That was on June 2, 1941.

Subsequently the final decree was entered, discharging the District from its debts, and providing that this payment at the composition rate would discharge all of those obligations.

Now, in that decree it was provided, and I quote:

> "If any money shall remain in the hands of the Registrar after petitioner claims that the Statute of Limitations applicable to its still outstanding obligations, if any, has run, petitioner may so report to this Court for such further action respecting said money remaining in the hands of the Registrar as this court may determine to be proper and for the final closing of this proceeding."

Our petition is brought pursuant to this provision in the [3] final decree, it being our contention that the statute of limitations has now run.

Appeals were taken, or an appeal. Mr. Mason,

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* Page numbering appearing at top of page of original certified Transcript.

who is here today, appealed it and that became final on November 9, 1942.

As to the other outstanding bondholders, who are not here today, they did not appeal, and, consequently, as to them the final decree became final three months after it was filed, which would have been October 15, 1941.

There now remains in the court the sum of $32,-811.59, and it is this sum that we now petition the court to return to the debtor, and to finally terminate these proceedings. [4]

Mr. John F. Downey: Now, while we are waiting for Mr. Neel, if the court please, we would like to reach a stipulation on certain matters to make them clearly of evidence in this proceeding today, and we would like to ask Mr. Mason if he would stipulate that the record on appeal from the interlocutory decree and from the final decree be stipulated to be in evidence in this proceeding.

Mr. Mason: May it please the court: I am not of the bar, and as to these technical questions on procedure, I am not familiar with them.

I would prefer to keep this record to a minimum, if possible, for obvious reasons, and if it is going to mean incorporating all of the previous testimony on any appeal that might be taken from this honorable court, I would prefer not to so stipulate. [18]

Mr. John F. Downey: Suppose we put it this way, Mr. Mason: Our purpose in desiring this stipulation is simply to show that Mr. Mason did actually appeal from the final decree and from the interlocutory decree, and, therefore, had actual no-

tice of these decrees. I think if Mr. Mason will stipulate he has had notice of the decrees and of the deposit of the money with the disbursing agent, I presume that such a stipulation would be sufficient.

Mr. Mason: Your Honor, I have known of the decrees, but I have always questioned the extent of the jurisdiction of these proceedings under Chapter IX.

Does that answer the question?

Mr. John F. Downey: Let's put it this way: Will you stipulate, Mr. Mason, that you had notice of the interlocutory decree and the final decree, and that the money was deposited to redeem the bonds at the composition rate provided by the court?

Mr. Mason: I knew that money had been deposited with the clerk of the court, but that money was not a legal tender under California decisions, which hold that a partial offer of payment is never a legal tender. I have a citation on that which I can submit. I was aware of the proceedings, but I have never recognized that the authority granted under Chapter IX goes as far as some counsel have argued.

Mr. John F. Downey: Mr. Mason, of course, we do not [19] intend by the stipulation to get any agreement from you as to the legality, or the jurisdiction, or anything of that nature. Our stipulation desired simply to show that you knew of these matters and knew what transpired in this case throughout.

Mr. Mason: I think my first answer would ap-

ply. I knew about the proceedings, yes. I have followed them. In fact, in this instant petition, I had no copy of your petition. I had a little informal notice, and I was required to go to Sacramento to get a copy of your petition. I was not supplied with a copy of it.

The Court: Do I understand, Mr. Mason, your basic objection is that the effect of the entire proceeding under the provisions of the Bankruptcy Act was to repudiate a debt, and that the whole matter is——

Mr. Mason: Not to repudiate a debt, your Honor. A tax is not a debt. This is a question of state valid taxes being abrogated by federal statute.

The Court: I am speaking of the obligations under the bond itself.

Mr. Mason: The obligation under the bond is merely a tax anticipation note, a mere promise by the state that taxes will be collected according to law, and when those bonds are destroyed, it simply means that the state's promise has been broken by federal decree. [20]

E. E. NEEL

recalled as witness on behalf of the petitioner, having been previously sworn, was examined and testified further as follows:

Direct Examination
(Continued)

The Witness: Should I just read it?

By Mr. John F. Downey:

Q. Yes. This represents the outstanding obligations at the composition rate at the present time?

A. Yes. F. C. Busche, 33 bonds at $515.01, $16,995.33. H. K. Busche, 11 bonds at $515.01, $5,665.11. J. R. Mason, 18 bonds at $515.01, $9,270.18. Unknown bondholders, one bond, $515.01. This makes a grand total of $32,445.63, plus outstanding detached coupons in the amount of $365.96, making a grand total of $32,811.59.

Mr. John F. Downey: All right, Mr. Neel. That is all.

(Witness excused.) [21]

Mr. Mason: It seems to me, your Honor, that this instant petition must stand or fall on the language in the final decree which refers to a statute of limitations applicable to the still outstanding obligations; not applicable to the deposit with the clerk of the court. The language in the final decree is "Statute of Limitations applicable to the still outstanding obligations," which, manifestly, can only refer to the law of the State, inasmuch as the State was the creator of the obligation. [22]

Mr. Mason: That is perfectly all right.

I will get back to this Moody v. Provident case, (12 Cal. 2d, 389). After the portion that I quote in my objections there, your Honor, it is said:

> " 'That the statute of limitations, under the circumstances disclosed by this case, could never be pleaded by the district until it had the money in its possession to pay the bonds belonging to the plaintiff, and had given notice, is supported by the case of Freehill v. Chamberlain,' "—that language isn't to pay in part, or to partially pay. That language is quite explicit, in my opinion, and I believe there was an attempt of counsel to misread or rephrase that by contending that a partial tender is money to pay the obligation. We are referring to the obligation as it exists under the State law.—"where it was held that when a city issues bonds with interest coupons, payable as fast as money should come into the Treasury from special sources designated in the act, the statute of limitations does not commence to run against the coupons until the money is received in the Treasury in accordance with the terms of the act."

Now, there are many cases on this, but the fact is that [33] the Moody v. Provident case is the controlling law in California. It is the well settled law, California law, and counsel has stipulated, that the statute of limitation that he will rely upon is the State statute of limitations, and the State Supreme Court has settled clearly and unequivocally that as against these obligations there can be no statute

of limitations excepting under the circumstances stated in the decision of the court. That is my belief, and I submit to your Honor that that is the well settled law in California.

Therefore, if the turning of this motion rests on the State Court decision of the State law, I believe your Honor is familiar with this ruling by the Fifth Circuit Court of Appeals that Chapter IX is a special exercise of the bankruptcy jurisdiction, and is dependent on State consent and is limited to that consent.

Here is a very interesting case that I do not cite in my objections, your Honor, in 148 Fed. (2d) 945, Berry v. Root. There an effort was made under one of these Chapter IX proceedings in the Coral Gables case, where the attorneys who had done a lot of work went into court and asked the court to assess a charge for fees proportionately against all the creditors because the United States Supreme Court had set aside the Coral Gables bankruptcy. Coral Gables was the first city government to file a petition under Chapter IX, and Coral Gables was finally compelled to pay its remaining bonds, after [34] three visits to the United States Supreme Court. That was the final outcome of the Coral Gables case. But this arose after the United States Supreme Court had split four to four in the Coral Gables case, and an interesting thing on that, your Honor, is that on the same day the Coral Gables case was decided four to four, the case of Wells Fargo Bank v. Imperial Irrigation District was also decided by the United States Supreme Court. The

Ninth Circuit Court of Appeals had ruled inconsistently with the Fifth Circuit Court of Appeals, but the vote in the Supreme Court was four to four, which meant the new ordinance was sustained. But this was after the Coral Gables decision. Here the court said:

> "While a court of bankruptcy often applies equitable principles, and may sometimes entertain a controversy in equity arising out of the bankruptcy in which it will follow the precedents and practice of a court of equity, yet as respects the original bankruptcy proceeding it is not strictly a court of equity, but a statutory court created by the Bankruptcy Act, and governed by it." [35]

May I also point out that in the case of the Imperial District final decree and in the Colusa District final decree, and several others, there was no time limit whatsoever [36] inserted in the final decree,—none. Also, this money on deposit with the clerk of the court, in my view, is under the control of this honorable court and is governed by federal law and is governed by judicial code title 28, sections 851 and 852, which provide that when any money has been so deposited, under a proceeding such as this, the general nature of, and is not called for within—I forget the exact language, but let us say whatever day the court may believe to be a reasonable time, that money must be turned over to the Treasury of the United States and held by the Treasury of the United States without time

limitation until claimants making and showing proof of right, title and interest in and to the money come along, without any suggestion of a time limit. [37]

The Court: Of course, your argument is contrary to the views of the court on the origin and status of these obligations. I do not consider the taxing feature to be decisive in these debt readjustment proceedings. I think it is a contractual obligation, and unfortunately and unhappily, the Supreme Court has said that repudiation of a debt is justifiable under the distressful circumstances that confronted these districts during the period involved.

Mr. Mason: I know it appears that way, your Honor, but in the Fallbrook case the same taxing statute stood up against the bankruptcy power, you will remember. [41]

The Court: Even in the gold clause cases the Supreme Court stated that an obligation of the government of the United States could be repudiated by an act of Congress, and that the repudiation was enforcible legally.

Mr. Mason: Yes.

The Court: If that is the rule, where is there any leeway in this court, which is bound to accept decisions of superior authority? This court does not have any leeway and cannot say that the Supreme Court did not mean what it said in the Bekins case.

Mr. Mason: Well, it did not say what people think it did.

The Court: That is your argument, but I do not believe I can accept it. I think the conclusion

as between the decision in the Ashton case and the decision in the Bekins case is irreconcilable.

Mr. Mason: My contention is that there were no conclusions in the Bekins case further than a bald statement that the Act itself is not unconstitutional. It went up on a simple demurrer with no facts, and no court is required to declare an Act unconstitutional until facts are before it. Unless that is true, the Act should be declared constitutional. But I did not mean to get into that, your Honor.

The Court: It is an interesting argument.

Mr. Mason: But with respect to the gold clause decision, [42] may I point out that the power to coin money is a federal law.

The Court: So is the power to enact a Bankruptcy Act.

Mr. Mason: But never was it decreed to include the sovereign power to tax lands,—never. Where we are in the position where Congress cannot tax land but Congress can untax land, we open the gates for the same troubles that the German Republic experienced. I was there. The Weimar Republic States had the power to tax lands, and the Reich did not, but the Weimar Republic, instead of trying to liquidate the states by a bankruptcy clause, passed a very simple statute saying that the sovereign powers heretofore vested in the Weimar States are transferred to the Reich. The rest was easy.

The Court: Of course, it is an easy thing now to look back after the war, with the economic changes that have ensued because of the war, and

say that probably the debt readjustment proceedings under the Bankruptcy Act, as sustained by the Supreme Court, were not quite as equitable as they should have been. But supposing there had not been these eventualities that have transformed the economic conditions in these irrigation districts. Then what?

Mr. Mason: May I answer that? It would have been the greatest blessing that could have happened for the returning soldiers, for the G.I.s, who would then have been able to go into any of these districts, and without paying fabulous bonuses to racketeers who have speculated in these lands. [43] Today the G.I. coming in is so handicapped because he has to pay these terrific bonuses for permission to use a plow. I submit that is what would have happened.

The Court: Maybe so. You may be a prophet, or you might be a good guesser. But we know what has happened, and I am talking about the history of the times.

Mr. Mason: I know what has happened in other districts, where friends of mine control more than one-third of the bonds, and where they were not able to go into bankruptcy.

The Court: If we look over the era of receiverships in the Federal Court, and if the judges had said, instead of attempting to rehabilitate in the economic circumstances that existed, "No gentlemen, sorry. You have three or four hundred employees here. We would like to keep them working, but there is no way in which you can extri-

cate yourself but by filing a petition in bankruptcy." Perhaps we would have done a lot better.

Mr. Mason: But the distinction, your Honor, here is that Congress has passed a rent control statute, which this Chapter IX proceeding directly contravenes.

The Court: I am afraid we are getting into an argument on economic problems which are way off from the point here.

Mr. Mason: I doubt that they are.

The Court: They may not be in the Supreme Court. I hope you may be able to convince the Supreme Court that they were [44] in error in some of these other Supreme Court cases.

Mr. Mason: Thank you, your Honor. I hope to have another opportunity. You may have noticed in the last case decided by the Supreme Court that they referred to persons in my position as "holdup men within the law"—within the law, your Honor.

The Court: I have never characterized a man that way who put his money into a corporate enterprise, or his bonds, as a holdup man. I think it is very unfortunate that he has to accept less than the amount of his bonds, but that has been the necessity which has been brought about by conditions over which he has no control and in many instances the borrower has no control.

Mr. Mason: How could a man, when he is within the law, at the same time be a holdup man?

The Court: I believe we will have to stop the argument right here because I can see that you are

arguing contrary to [45] what I conceive to be the decisions of superior authority.

Mr. Mason: But may we come back to the real question on which this motion turns. This motion is a separate action, in my humble opinion. It raises a question of State law which has been construed by the State Supreme Court.

The Court: I do not think it involves a question of State law. It involves a question of law under the Bankruptcy Act.

Mr. Mason: According to the language in the final decree, the statute referred to is the statute applicable to these still outstanding bonds, which can mean only one thing.

The Court: I have told you the court's view on that. You do not seem to want to accept it. It isn't going to be changed by just talk.

Mr. Mason: The court's view on what?

The Court: On the effect on these obligations. I have told you that under the provisions of the Bankruptcy Act there was a transformation, a modification of these obligations. There is no way of talking the court out of that view, because that has been settled.

Mr. Mason: All right. Then might I ask the court a question: There is a co-obligation, a co-debtor behind the bonds, namely, the County of Merced, and under the Bankruptcy Act the discharge of one debtor does not affect the co-debtor. I would like to ask the court whether in the court's [46] judgment the restrain contained in the final decree, which is very explicitly only a restraint as against

the petitioning debtor, or whether that restraint also includes a proceeding against the County of Merced, under a law which was at no time the law of this proceeding?

The Court: I don't believe the County of Merced was ever a party.

Mr. Mason: Never, to my knowledge.

The Court: We are not going to restrain anybody who is not before the court, Mr. Mason.

Mr. Mason: Thank you.

The Court: Now, may I ask you a question. You do not have to answer it unless you want to. Are you willing to accept the amount which the other bondholders have accepted for their obligations?

Mr. Mason: Your Honor, I am willing to accept it under protest.

The Court: That would not be an acceptance, of course.

Mr. Mason: I am——

The Court: They took theirs. They protested, too, I think.

Mr. Mason: I am sorry. They did not.

The Court: I mean they reluctantly accepted it; justly so. If a man loaned $100 to another, and the other paid him back $52, he would not very willingly accept $52 in cancellation [47] of the obligation. That is true.

Mr. Mason: It is a very interesting condition that I have been in for a great many years, attempting to defend the State against federal usurpation, and then to find that the thought is that Chapter IX makes any petition such as this obligatory

on the court to put through, because I feel the court has no jurisdiction over the debtor.

The Court: I wouldn't say that. You know, I heard this proceeding in its second chapter. I heard the evidence, and I entered the decree.

Mr. Mason: Yes.

The Court: I am speaking of the presiding judge of this court. There was no question of that kind. We determined at that time that it was feasible and equitable, and we have no regret, no qualm of conscience, no feeling of remorse, or anything of that kind. We are sorry that the law was in that shape. We regret that the economic conditions were such that it made it necessary to enter such a finding, but we are not sorry that we did it, because we did what we felt was right.

Mr. Mason: I am sure you did, your Honor, but I just want to point out that this court had no jurisdiction over this bankrupt at any stage in the proceedings. The bankrupt has never been under its orders, at no time. You did not have authority, then, to pay one cent more or less. I submit that the court has had no jurisdiction under Chapter IX, and [48] it is indeed a novel condition where, we will say, it is only the creditor who is subject to the court's order, and not the debtor. It is novel, is it not, your Honor?

The Court: You have not answered my question, Mr. Mason.

Mr. Mason: Your Honor, I do not want to be unreasonable. I have done what I believed was for the best interests of the general welfare in all these

matters. If you tell me that I either must unqualifiedly accept the offer or I am alienated, if that is the demand or suggestion, I would just like to know.

The Court: I haven't made any suggestion. I have asked you a question.

Mr. Mason: Don't you see the very puzzling position, from my standpoint?

The Court: I am not asking you to place yourself in any position you do not want to place yourself in.

Mr. Mason: Here the bankrupt is asking for money which clearly does not belong to the bankrupt by any law cited by the bankrupt, and is asking for money which is clearly a part of my money. I think this is a separate cause of action from the final decree, and, as I say, your Honor, I will accept the money, but under protest, if that meets with your——

The Court: No, you would have to be on a parity with the others who have accepted their money. We cannot discriminate in favor of one bondholder against the other, or in favor [49] of the others as against one.

Mr. Mason: Well, your Honor, in other words, if nine men commit suicide the tenth man cannot question but what he must,—the fact that these others voluntarily gave up their bonds? It was not done by court order.

The Court: The tenth man can save himself, but he has to do it himself and without any equivocation.

Mr. Mason: That is what the tenth man is trying to do, your Honor. I am not trying to equivocate, not intentionally. The point is this, your Honor: If these bonds are surrendered and canceled, the title companies will again write title insurance policies on that land in that district. That is why they are so anxious to get them out of the way, because the title companies do not recognize this controversy as final.

Your Honor, I appreciate the time you have given me. I have been struggling for what I believed was right for a good many years. If the judgment of the court is that I must either take the money or get nothing, I will take the money, but I would prefer to reserve the protest, because I am doing it under protest, and not willingly, and only under court order.

The Court: I am not going to order any such thing. I am going to rule on this application of the Merced Irrigation District. [50]

Mr. Mason: That rule is that if I don't take the money——

The Court: I haven't ruled yet. I have asked you a question.

Mr. Mason: You would not permit the matter to be further briefed?

The Court: I would if the court's mind was at all uncertain about its duty in the case, yes. But it is not.

Mr. Mason: You feel that your duty is to give that money to the bankrupt?

The Court: No, I didn't say that. I would like

to give the money to the bondholder, but I want him to place himself in the same position as the other bondholders.

Mr. Mason: But the other bondholders did not place themselves in any position with this court.

The Court: There is no use of arguing that, because they did. They have accepted their money in satisfaction.

Mr. Mason: They did that long before there was any petition here.

The Court: There is no use in arguing. I am not going to discuss it any longer with you.

Mr. Mason: All right, your Honor. If it is your Honor's thought that he is compelled to do something, which I did not think he was compelled to do, I will place myself in the court's hands. I have been told by very able counsel that I was fighting something that was just as ineffective as tilting [51] at windmills; that we are going to have inflation and that the taxing power is going to be overthrown, and it was a futile attempt to defend the State's taxing power, which is what I have been doing, your Honor, for these many years.

I will take the money, your Honor.

The Court: You are taking that money without any reservation or any condition?

Mr. Mason: If the court is unwilling to accept my statement, "with reservation." If the court would allow me to do it under protest, to show that I didn't surrender.

The Court: I don't think that would be proper. That would render the whole proceeding, in my

opinion, ineffectual, Mr. Mason. We have to decide things in the court.

Mr. Mason: It will not render the proceeding ineffectual if the proceeding is one that will——

The Court: The alternative on that is for you to not accept it. I am not telling you to accept or to not accept. I am putting it to you, and you are sui juris to a pretty high degree. You have the right to accept the decision of this court, and if it is adverse you have a right to pursue your remedies to review it. Nobody is trying to persuade you or coax you or suggest to you or intimate to you in any manner or degree that you should waive any such right.

Mr. Mason: Yes.

The Court: If you are willing to take this money on a [52] parity with the other bondholders, on the same basis under which they have taken theirs and canceled their obligations legally, that is one thing. But if you do, you must do so without any restraint or condition.

Mr. Mason: Might I inquire what would become of the Busches' claim?

The Court: They have not appeared here. I don't know. I might continue that for 30 days, if we have any equitable power, and I am assuming that we have. Otherwise, the District would be entitled to insist upon the letter of the law.

Mr. Mason: On the equitable power of the Berry v. Root case, it goes directly to the question of the court having equitable power.

The Court: I am inclined to think that as to the

amount in the registry, that we have some control of that amount.

Mr. Mason: I believe that is beyond the control of the District, however.

The Court: I say I am taking that view of it. I want to know what your position is. You have not stated it.

Mr. Mason: I have stated that I would take the money, and under protest, and if that is unsatisfactory, may I have an opportunity to advise with counsel, because I am acting as my own counsel?

The Court: I understand that. That is the reason I [53] prolonged the discussion, Mr. Mason. If you had been an attorney representing an interest, I would not have discussed it to this length.

Mr. Mason: Might I have 30 days, your Honor?

The Court: Would you need 30 days?

Mr. Mason: I don't know.

The Court: Suppose you take 10 days. You ought to be able to make up your mind in 10 days.

Mr. Mason: But, your Honor, the District cannot claim that money which does not belong to them.

The Court: I am not thinking of the District, and I am not particularly thinking of you. I am thinking of this court's work in keeping matters on its calendar when it does not seem necessary to do so. Thirty days is quite a long time.

Mr. Mason: My objection points out, your Honor, and by referring to this instant petition, the question in this instant petition, I submit you can

dismiss the whole proceedings and let the State Court settle it.

The Court: I am not going to do it because it is not the State Court's responsibility.

Mr. Mason: The statute of limitations is a State law; I mean the statute of limitations applicable to these bonds is clearly a State law. There is certainly no federal statute of limitations applicable to these bonds.

The Court: Do you want 10 days? [54]

Mr. Mason: Won't you let me have fifteen?

The Court: All right, sir. I will give you fifteen.

Mr. Mason: Thank you, judge.

The Court: We will continue the further hearing on this one phase of the matter until Friday, November 15, at 10:00 o'clock. That is a little more than 15 days.

Mr. Mason: Thank you.

The Court: And, Mr. Mason, we will ask you to manifest your decision, by filing a writing so that we can have it in the record, either way. You understand?

Mr. Mason: Yes.

(Whereupon, at 12:00 o'clock noon, Tuesday, October 29, 1946, an adjournment was taken until Friday, November 15, 1946, at 10:00 o'clock a.m.) [55]

The next point we wish to mention that is brought up in respondent's reply is the question of whether or not this court in this proceeding has equitable powers. That reply states that the court is not acting

as a court of equity. If that is true, our position is much stronger and much better here. If this court does not have equitable powers, we can see no way by which it could possibly turn the money here over to the bondholders at this stage of the proceedings.

But let us look at just what that case says. It is the case of Berry v. Root from which the quotation is taken, and I will read a little more at length from the quotation than is given in the respondent's reply. The court says: [62] (148 Fed. 2d, 945)

> "* * * While a court of bankruptcy often applies equitable principles, and may sometimes entertain a controversy in equity arising out of the bankruptcy in which it will follow the precedents and practice of a court of equity, yet as respects the original bankruptcy proceeding it is not strictly a court of equity, but a statutory court created by the Bankruptcy Act, and governed by it."

It would seem from that that although the court in this type of proceeding would have perhaps certain equitable powers in some instances, that it is actually a statutory court and not vested primarily with equitable powers.

We will discuss this a little bit later with regard to the equities that there may be here, but before discussing that I would like to point out our main premise in this case, and that is that regardless of whether this court in this type of proceeding may generally have equitable powers, it is our definite

position that in this particular proceeding it does not have those powers, because if the statute of limitations has actually run, as there seems to be no question, that is, if a statute is applicable and is running, then the rights of the petitioner can hardly be defeated by equitable rights, since the rights of the petitioner have become established as property rights, and if the statute of limitations has run, [63] the obligation has become extinct. The equitable powers of the court, it would seem, could hardly consider an obligation which has so become extinct.

As we pointed out at the last hearing, the statute of limitations is a rule of property and property rights actually vest by virtue of that statute. The property rights here, if the statute of limitations has run, has actually vested and the obligation has become extinct.

The court would, therefore, be without any true power to do anything about that obligation at this time. It would have but one recourse, and that would be to turn the money back to the District. In other words, what our contention boils down to is that if a statute of limitation is applicable here, as we have pointed out, it must be when that has run, if a property right is acquired and the property right vests, it cannot be divested, and that by virtue thereof the only thing the court can do now is to turn the money back to the District.

The Court: Do you have the Act there, Mr. Downey? Would you read that portion of the Act

again that relates either directly or indirectly to the question of limitations?

Mr. Downey: I think there is no mention of limitations actually in the Act. I can find nothing there that does say there shall be a limitation. We have to go outside of the Act and into State law to find the limitation in that regard [64]

The Court: I wonder whether there is any difference between an enactment under the Fair Labor Standards Act, the Wage and Hour provisions of that Act, which is a division of Social Security and which is an innovation in the law which has its origin in very recent tmes, so far as the statute is concerned, in this country, and provisions in bankruptcy [67] which are ancient, and which are derived directly from a constitutional provision in the organic law itself and indirectly from proceedings in bankruptcy, which antedate the Constitution of the United States, which, as I recall, were administered by the Chancery Courts in England. Isn't that true, historically?

Mr. Downey: I presume it is.

The Court: Do not presume it, because this court states it. Is that your recollection of the history of bankruptcy?

Mr. Downey: Yes, it is.

The Court: In other words, I am just interested in Judge Sibley's learned opinion in the case of Berry v. Root. I had not read it before. I saw the excerpt in Mr. Mason's brief and, of course, I am very hesitant to disagree with such a learned judge

as Judge Sibley. He is not only learned, but experienced. I am going to read it thoroughly.

Quoting from Mr. Mason's memorandum, just before the quotation from the case, Mr. Mason states on page 3, line 7, of his memorandum:

> "In a very recent case the Fifth Circuit ruled that in cases based on the same federal law as the instant proceeding, the court said: '* * * is not a court of equity but a statutory court created by the Bankruptcy Act and governed by it.' "

Now, while it is true that the public debt adjustment [68] amendments to the Bankruptcy Act are statutory, the Supreme Court of the United States has said that they are activities that are authorized under the constitutional grant of the people to the federal government to pass appropriate acts in support of that constitutional mandate. If that is true, while Judge Sibley undoubtedly is correct in his statement that the court is a statutory court, that is too simplified to determine just the composition of the bankruptcy proceeding under the public debt adjustment provisions of the Bankruptcy Act, because it does have equitable play. That is the very basis of it. In other words, the court, before the public debt adjustment can be effectuated, must make a finding that it is feasible and equitable. If it must make that finding, certainly it has aspects of a court of equity, and I don't think that you can detach these proceedings in bankruptcy for the adjustment of public debts from

the equitable zone of the United States District Court. It is true that it is statutory. Most of our Acts, unless they pertain essentially to those ancient matters that were within the cognizance of chancery courts, are based on statutes, Acts of Congress, but they are equitable, nevertheless. These bankruptcy proceedings, preferences, and so forth, are all in their nature equitable, and so where a bondholder asserts a right to a fund that is in the process of settlement in a liquidating or a quasi-liquidating activity in the federal [69] court, he comes into a court of equity, and his case is to be determined by the principles of equity. For that reason I think that this question of a statute of limitations is a question of laches, not a question of cold statutory application of the statutes of limitation, as is expressed in the State statutes; and if it is laches, then we have a right to consider all of the features that apply to an equitable proceeding, where the doctrine of laches is invoked by one of the litigants.

I am going to read this case a little more thoroughly, but I think probably that the isolated statement that Mr. Mason selects is a statement that is predicated upon his argument in this matter, and probably does not go to the basic equitable aspect of this case. Thus, this court's view is that Mr. Mason's standing is based in equity, and it is not based entirely upon a statutory right, but it is a right which arises out of a statute—it is true, an amendment to the Bankruptcy Act,—but it must be determined by circumspection, by looking at the picture from all points of view. And if we look at the

picture, this is about what it is: If the Reconstruction Finance Corporation, the government agency, had not come forward at the time and underwritten a new bond issue, there would not have been much outlook for the bondholders. It did come forward. It came forward for not only a private reason, to assist a disabled Irrigation District, [70] but it did so because of the public aspect of that matter. Not only from the standpoint of those who expected to use the water irrigation district, or its other appurtenances, but those who did lend their money originally with which that entity might be organized and function under the State laws. Therefore, there was a dual purpose that the R.F.C. had in coming to the aid of this District.

The contract provided that instead of getting a dollar for a dollar's loan, they got 52 cents for a dollar's loan. I think it was 52 cents, wasn't it?

Mr. Downey: About that.

The Court: That did not mean that those who had to sacrifice the 48 cents, in addition to the increment that they expected to get by reason of the obligation if there was liquidation,—I mean to say, that did not mean that unless they came forward within a specified time, an arbitrary fixed time which is not fixed in the law, and that is the reason I asked you to read that provision of the statute which specified limitations, that ipse dixit upon the happening of some event dictated by the District the individual who was required to accept the 52 cents for a dollar and the increments which he expected to get from that investment of $1, that if he cannot get it, it goes

back to the District. Why should it go back to the District?

Mr. Downey: Well, I think, as any other obligation, it [71] boils down to the old law of laches and limitations, that if a creditor allows an obligation to become stale, he has no further right to assert that obligation.

The Court: Mr. Mason did not allow it. He has been pretty active here in endeavoring to collect it, to collect all of it. He was not satisfied and, of course, is not now satisfied to accept it, but he has only one alternative now. He either has to accept it or reject it, and if he rejects it, he has to take the consequences which the law applies to those who have the opportunity even at the eleventh hour, to come in and accept the same burden which others who were similarly situated accepted. I cannot see any equity at all so far as the District is concerned.

Mr. Downey: Could I discuss it from the point of view of laches and equity, then, for a short minute?

The Court: Yes.

Mr. Downey: It is my understanding that in the exercise of equitable jurisdiction, the court exercises that and intervenes on behalf of a person who has equities. The test is, does the party on whose behalf the court intervenes have the equities? I think the test would not be whether the District has equities, but whether or not Mr. Mason and the other outstanding bondholders have equities.

Now, as regards Mr. Mason's equities, originally, as we mentioned, the final decree was proposed with

a one-year [72] limitation, and at Mr. Mason's instance, that was removed and a provision was substituted which said that the District might report back at the termination of the period of the statute of limitations for further consideration of the matter, and that was inserted in the final decree. In other words, Mr. Mason presumably extended the time from one year to a statute of limitations period, or an indefinite period. In any event, the extent to which he extended it was well known to him. As the court has noted, in a quotation from Mr. Mason which I read at the last hearing, Mr. Mason was opposing then the one-year provision, and in his opposition to that one-year provision he mentioned that the statute of limitations period would not be less than four years. It would seem by his own statement there he recognized the very definite possibility of a statute of limitations running four years. In other words, he has waited beyond that four years, and beyond five years, and although, as the court has said, he has continually attempted to secure his rights on this, since his last appeal from the final decree, at least so far as the records of this case are concerned, there is nothing to indicate that he has done anything, and that, of course, has been a full four years ago.

I think that, that being true, there is not any particular equity in him disregarding the District's equities, which I think the court can well disregard. The question is, is the [73] court going to intervene for this man and assert its equitable jurisdiction?

The test is, does this man entitle himself to the equities?

The Court: There may be an answer to this in the Lumber Products case. I think we had better get that Lumber Products case. The title of that case is Case v. Lumber Products. It is a Supreme Court case. It seems to me there is a principle there that answers that. The Lumber Products case, as I remember, was a reorganization of the Lumber Products Corporation, and a subsidiary, the Los Angeles Shipbuilding Corporation. I am speaking now just from memory. We will get the book in a moment. A number of persons were interested in rehabilitating those concerns, which was during the depression, I think, and they came forward and were willing to underwrite a reorganization by putting up certain moneys, provided they were given a preferential place in the picture. There had been preferred stockholders and bondholders, and the suggested plan was that those who came forward with the moneys sufficient to rehabilitate the concern would be substituted in the place of the bondholders and would be given preferred stock, as I remember it. That plan was eventually approved, because the Circuit Court of Appeals affirmed the decision of this court for the Southern District of California. The case then went to the Supreme Court, and in an opinion there by Justice Douglas, I think, this ancient principle of the [74] obligation of a contract was the paramount question, and although I think there were one or two minor bondholders there, out of a large number of

persons who acquiesced in the plan and agreed to it, who did not so agree, the court said: No, you cannot do that. There is an obligation of a contract that is inviolable, and it cannot be done in that way.

This is the case of Case v. Los Angeles Lumber Products Co., Ltd., 308 U.S., commencing at 106.

Now, in our statute, what are the adjectives used there? I haven't read it in the last week or so. Are the words "fair and equitable" used in our statute with regard to the approval of the plan?

Mr. Mason: Words to that effect, your Honor.

The Court: "Feasible," I think it is, "and equitable"; something like that.

Mr. Downey: "Fair, equitable and for the best interests of the creditors."

The Court: "Fair, equitable and for the best interests of the creditors."

Now, in this portion of the opinion in the Lumber Products Company case, it is stated—there is a lot more of it, and I am not going to read it all, but I think the principle here is just the same as in the Lumber Products matter:

"At the outset it should be stated that where a plan is not fair and equitable as a matter of law it cannot be approved by the court even though the percentage of the various classes of security holders required by Sec. 77B(f) for confirmation of the plan has consented. It is clear from a reading of Sec. 77B(f) that the Congress has required both that the required percentages of each class of security holders approve the plan and that the plan be found to be 'fair and equitable.' The former is not a

substitute for the latter. The court is not merely a ministerial register of the vote of the several classes of security holders. All those interested in this case are entitled to the court's protection. Accordingly the fact that the vast majority of the security holders have approved the plan is not the test of whether the plan is a fair and equitable one. This is in line with the decision of this Court in Taylor v. Standard Gas & Electric Co., 306 U.S. 307, which reversed an order approving a plan of reorganization under Sec. 77B, in spite of the fact that the requisite percentage of the various classes of security holders had approved it, on the ground that preferred stock of the debtor corporation was inequitably treated under the plan. The contrary conclusion in such cases would make the judicial determination on the issue of fairness mere formality and would effectively [76] destroy the function and the duty imposed by the Congress on the District Courts under Sec. 77B. That function and duty are no less here than they are in equity receivership reorganizations, where this Court said, 'Every important determination by the court in receivership proceedings calls for an informed, independant judgment'." Citing a case.

"Hence, in this case the fact that 92.81% in amount of the bonds, 99.75% of the class A stock, and 90% of the class B stock have approved the plan is as immaterial on the basic issue of its fairness as is the fact that petitioners own only $18,500 face amount of a large bond issue.

"The words 'fair and equitable' as used in Sec.

77B(f) are words of art which prior to the advent of Sec. 77B had acquired a fixed meaning through judicial interpretations in the field of equity receivership reorganizations. Hence, as in case of other terms or phrases used in that section, . . . we adhere to the familiar rule that where words are employed in an act which had at the time a well-known meaning in the law, they are used in that sense unless the context requires the contrary. . . .

"In equity reorganization law, the term 'fair and equitable' included, inter alia, the rules of law [77] enunciated by this court in the familiar cases"—citing a number of them. "These cases dealt with the precedence to be accorded creditors over stockholders in reorganization plans."

Then the court go on, through Justice Douglas, to analyze those terms, "fair and equitable," "fairly and equitably treated," "adequate and equitable," "just, fair and equitable," and like phrases, and concludes as I have stated, that the proposed plan should not be effectuated so as to defeat even these small bond holders from the enforcement of their obligation. That is the principle that, I think, is the polestar in this proceeding. The District certainly has no equities here. It was a failing venture. Had it not been for the governmental agency that was set up for the purpose, not exclusively of assisting disabled irrigation districts, but for that purpose in addition to the public aspect, the question that a great many people had invested in irrigation district bonds, that it was a matter of general public interest, and that, therefore, the govern-

ment, through its agency under the bankruptcy provisions of the Constitution, in those periods of distress should come to the aid of those entities, and as far as it could, appropriately assist in the rehabilitation of them.

Now, a bondholder has a right to stand on his obligation in this case as long as he can, and to litigate and to [78] contest and to attempt to collect his money, and because he has done so he cannot be said to have waived any equities which, under the principle of the Lumber Products case, he has always had. It seems to me that on the score of equities, we have a right to take the history of the times into consideration in these cases. We know now, or, at least, we feel that the situation now is entirely different in these irrigation districts. That was one of the fortunes of war, if there are any fortunes of war, that the farmers in these areas have been able to rehabilitate themselves, and the Districts have pretty well gotten out of the red. So if this money goes back to the District, it is simply in the nature of an unjust enrichment. It is just that it has been able to accumulate in the reservoir of the District moneys which it does not need, and the one who has left the money is the creditor who, simply because he attempted to assert his rights, must now, because of the limitation of a certain time which the District is attempting to fix, as they say, lose it. The court has not fixed any time, and that may have been in the mind of the court at the time that the first presentation of the decree occurred, in which there was a fixed limitation within

which time the creditors must present their bonds.

Mr. Downey: Your Honor, let me consider two or three things here. With regard to the provision as to a fair and equitable plan, this, of course, has been determined to [79] be a fair and equitable plan. The payment of fifty-one and a fraction cents on the dollar has been determined to be the fair and equitable method of reorganizing this District. The question then is, isn't that final and complete, when that determination is made, as far as the fairness, and the equities, of the original plan is concerned? The pressing of the point continually thereafter in an attempt to secure the full amount should be subject to that determination that has already been made, that the plan of composition is fair and equitable.

I think it would follow from that that, so far as the equities in that regard are concerned, the continual attempt to secure more than what is fair and equitable, which has been determined to be fair and equitable, is not something that should entitle a man to the equities in the equitable powers of the court.

Also, as far as what is fair and equitable is concerned, certainly if a one-year limitation had been fixed, as it was in many cases, that would have been proper and adequate. It has been held to be so in cases reviewed by the United States Supreme Court. Of course, that wasn't done here, but it does have some bearing on the question of what is equitable and what amount of time is reasonable. It might

also, by analogy, be said to fix a time within which laches or some other limitation might run. [80]

The Court: That is true. There are many cases, of course, involving the doctrine of laches in which the courts have used as a yardstick the local statute of limitations on similar questions, but that would be the extent. As I remember, there were those cases. The court of equity is to be guided by its own conscience. It must use these yardsticks which have been set up by judicial precedents, and so forth, and that is all. There is no statute.

Mr. Downey: Let me go into another question here, then. It can perhaps be said that by the continual assertion of the right, a man cannot be held to have laches run against him. But as to the other bondholders here, we have a matter then that would certainly not fall within that category. They have done what would be, I think, considered by all courts of equity as something which constitutes laches. In the first place, they did not appear in the original proceeding, which, of course, they were under no obligation to do. But they were notified of the availability of the money that had been deposited for them. They were notified of the proceeding as it went along. They were notified of this hearing, and still they have not even seen fit to make an appearance or to come into court and find out what the proceeding is about. I think by any definition of laches, what they have done would certainly constitute laches, especially since it has gone on for a period of many, many years, and for a period of more than [81] five years since the final decree. So

even if the court is to consider that Mr. Mason has certain equities here which would prevent him being barred by laches, that argument can hardly go to these other bondholders, who have continuously over many years sat back and never even raised a word on their behalf, and have never made any attempt, though advised, to take this money which the court awarded them on their bonds.

The Court: Those who have not appeared, of course, are not in the same situation that Mr. Mason is in. We have to apply all of these principles. The only phase that presents an appeal to the court of equity would be whether or not there should not be some stay, particularly in view of the fact that you say you are going to review the decision if it is adverse, and whether we should not hold the fund here, so as to safeguard the interests of others.

Mr. Downey: If the court please, I did not mean to indicate that we would necessarily review the decision. I was thinking in terms of the record. I was thinking the decision might go either way.

The Court: I did not mean to take any offense. I think you have a right to review the decision, and we want to put the record in shape where you can review the decision. But at the same time we want to hold the funds, if the decision is as we think it should be with respect to bondholders, so that the money will be available without further effort on the part of those bondholders to recover it.

I do not take the view that you argued, Mr. Downey, that when money is deposited in the registry, as it is deposited here, that the court is an auto-

maton. I think the fund comes here for administration under the equitable principles that are applicable in law to the cases where the money is deposited.

There does not seem to be much else to say. I notice that Mr. Mason in his final concession states the following:

> "It is therefore respectfully submitted that the petition be dismissed, that the funds in the custody of this Court be paid out only upon valid and lawfully proven claims, or should the petition be allowed, that the proceeding be wholly dismissed, lifting the restraints against the holders of still outstanding bonds, and Respondents be allowed access to the courts to seek the protection guaranteed to the holders of valid, binding and unpaid local government bonds secured by the Califorina and Federal Constitutions.
>
> "Should this prayer be wholly denied, Respondent will, if left no alternative, deposit his bonds with this court, but such deposit will be without consent to jurisdiction, without prejudice and without waiving any [83] substantive or procedural vested rights."

What does that mean, Mr. Mason?

Mr. Mason: If it please the court: I am not at all qualified to state in the technicalities and niceties of the law. Firstly, might I mention that the distinction, in my humble opinion, between Chapter IX and Chapter X, which was the statute on which

the case of Case v. Lumber Products rested, is that the Lumber Products case involved a contract between two private interests. The contract in the bonds at bar is not a contract between private interests, but a contract made for the State of California.

The second point is that Chapter IX contains a provision, I believe, under which nothing may be ordered by the court which is not accepted by the bankrupt. I believe that is unique in the bankruptcy statutes. Speaking of the old common law, was it ever known that the bankrupt was beyond the jurisdiction of the court, and only the creditor was subject to the court's decree? I am merely asking.

I believe that does distinguish Chapter IX from any other statute. There is nothing the court can do under the Chapter IX provisions, other than to approve the plan as submitted, or it can make no modification of the plan without the consent of the bankrupt.

I would just like to say this. My interest here is not primarily pecuniary. The court's remark about the Merced [84] District, to the effect that if the R.F.C. had not come to its rescue, it would be—and I forget the exact words, but I would like to comment on that for a moment, because I was one of those who handled the original bonds of that District. I was then fairly active in the underwriting of securities of this nature, and I have studied the history of irrigation and irrigation districts. I would like to just point out to the court a little the

objective of this whole Chapter IX proceeding, not in relation to county and city bonds, because there have been many such in Florida, and elsewhere, that have taken advantage of Chapter IX, but with respect to the irrigation aspect in California. At the time this Chapter IX was first enacted, the appraised value and the estimated true value of the taxable lands within California Irrigation Districts was estimated by the Irrigation Districts Association of California, which is the official body representing all the districts, to be in excess of one billion dollars, and at no time has there ever been as many as one hundred million dollars of irrigation district bonds outstanding in California. Looking back over California, the inexpensive water supplies were those first undertaken. Since the inauguration of these Chapter IX proceedings, the United States government has appropriated over five hundred million dollars for new similar irrigation works in the West, which represents an average investment per acre of 800 per [85] cent of the appraised figure of the R.F.C. on these old irrigation districts in California—no, I mean 800 per cent of the original bonds outstanding and 1600 per cent, sir, of the R.F.C. appraisal of the value of the securities on these old bonds, which I submit leaves serious doubt that the Merced Irrigation District was not fully able at all times to have met its lawful obligation, and I would just like to offer a statement made in 1932 by the Irrigation Districts Association at their annual convention, in which they called attention to a tax strike, which had been,

according to the Association, fomented, and I would like to read the words of that Association:

> "These interests are now attempting to foment a tax strike; they are attempting to throw the District into default;"—this was with respect to the Imperial District—"they are handicapping the Board of Directors in every way possible, and are apparently influencing the banks to indirectly aid them in their nefarious scheme.
>
> "They are willing to wreck everything and everybody in order to prevent that electric power being generated by the irrigation district.
>
> "This attempt to wreck the district and its 62,000 people in it is dastardly, and this association and every person in the district should put forth [86] every means in their power to aid that District and its Board of Directors to prevent this outrage."

But I submit this tax strike went over the State.

The Merced Irrigation District is one of the oldest communities in the State. It includes the City of Merced. The City of Merced bonds were never defaulted. The City of Merced bonds are secondary in line, under California law, or at least not prior in line to the Irrigation District bonds. The Irrigation District includes the City of Merced and some 150,000 odd acres surrounding it.

I just wanted to comment on the court's remark there, because I have never subscribed to the belief that these communities were unable to collect the

taxes. Certainly they lacked no taxing power. They simply did not exercise their taxing powers, and my position has been from the beginning that was entirely an affair of the sovereign State of California, and on the basis of the Supreme Court opinion in the Bekins case, may I respectfully point out that the court in the Bekins case pointed out explicitly the protection, the safeguards, the conditions inserted in the amended Chapter IX, which the court said would prevent the court at any time from issuing orders or decrees inconsistent with State law.

Now, it appears puzzling—it is puzzling. I have taken many petitions to the United States Supreme Court, all of which have been denied, based on the actual facts, but my [87] position simply is that a denial of a petition is not tantamount to a reversal of a principle of constitutional law. I just wanted to clear up, if the court has the thought that my interest is a selfish one——

The Court: I had not thought of it at all. I think the court's observation would indicate otherwise. We just dealt with you as a creditor.

Mr. Mason: I just wanted to make sure of that point.

Now, with respect to the point that Mr. Downey has focused on here in our November 12th communication, he says that: It is our position that the court is without jurisdiction, if it now desires to do so. Mr. Downey has not commented on the Moody v. Provident Irrigation District ruling by the California Supreme Court, which, your Honor,

in my humble opinion, is controlling of the basic question before the court in this proceeding, which is whether or not the statute of limitations applicable to those still outstanding bonds has run.

Now, in this Moody v. Provident case, the Irrigation District before the court took the opposite position. It was the Irrigation District which insisted there could be no statute of limitations under the law, and the California Supreme Court agreed with the Irrigation District, and this decision is the controlling law—is controlling of the State law, in my humble opinion. [88]

Mr. Downey has suggested no opinion which reverses or modifies or overrules it, and I believe, your Honor, in the San Joaquin Irrigation District case, which is still pending before Judge Welsh, and I believe this is the fourth start the South San Joaquin District has made to try to bludgeon the so-called minority creditors, but Judge Welsh has not even approved their petition. The interlocutory decree has not yet issued in that proceeding, and the Equitable Life Insurance Company and myself are the main objectors.

Whether or not it would be appropriate to ask the court, in view of the suggestion by Mr. Downey to lift the restraints, Mr. Downey complains that I have been pressing for the money. I have been under the restraint of the court. I could not make a move, and, therefore, he says I have been guilty of laches, and I can't quite reconcile that.

I would like, your Honor, to point out that even if there have been a statute of limitations appli-

cable to these bonds, that under California law the equities in those bonds are not gone, and a more recent opinion by the California court than that Raisch v. Myers case which I cited in my original reply can be found, and it supports that Raisch v. Myers ruling, which involves bonds that have outlawed. The more recent case is Ward v. Chandler Sherman Corporation, 76 A.C.A. 453, which involved some State improvement bonds which admittedly had outlawed, but the court points out that even after they [89] have outlawed, that when, as and if the money is received from the delinquent taxes, that that money must go to those outlawed bondholders.

The Court: On the trust fund theory?

Mr. Mason: On the trust fund theory, yes, your Honor, and even assuming that the discharge is final in this proceeding, with which I do not agree, but even assuming that it is, there is a very important decision, it seems to me, a recent one by the Nebraska Supreme Court on June 28, 1946, Omaha US Employees Federal Credit Union v. Brunson, 23 N.W. (2d) 717, in which the court says that the discharge of a bankrupt does not affect securities, and they are subject to a judgment or decree in rem, but the creditor applying for such remedy may be required to await the result of the bankrupt's discharge, if the bankrupt or assignee insists upon it, but while a mortgage does not convey title, nor vest any estate in the mortgagee, it is not released by the mortgagor's discharge in bankruptcy.

Here, if it please the court, we have state obliga-

tions, which are prior in lien to any mortgage. Taxes in California reach ahead of any mortgage, and that was clearly before this court and before the court above in the Fallbrook v. Cowan matter. Let us just take Mrs. Cowan's case. Would two Mrs. Cowans have rights that one Mrs. Cowan would not have? Would any multiple of Mrs. Cowan have rights that Mrs. Cowan [90] did not have? The three-year privilege had run. The privilege of redemption had expired. She was not allowed under the Circuit Court of Appeals decision to file under Section 675. Now, in the Merced Irrigation District they have allowed the three-year statute to more than run under the same basic law.

I question that that was the intent of Congress, to authorize its courts to do for Mrs. Cowan doubled, let us say, and to do in similar circumstances what the court could not have done for Mrs. Cowan individually.

Here we have a case of a State agency, State taxing agency, State tax officials who have absolutely flouted State law since 1932, and, in substance, they are asking this court to sanction and approve their violation of the mandatory State taxing statutes. Would it be any less if the State of California had enacted a statute authorizing State courts to allow citizens to escape paying valid federal taxes than to assume that Congress meant for the Federal Courts to allow citizens of a State to own land and escape paying the lawful taxes on that land, and to hold the land in clear, unequivo-

cal violation of that State law? That is still the unsettled question in this Chapter IX matter that worries me, your Honor.

I do not believe that our States should be allowed to go to Washington to ask for help every time they break their [91] finger. I believe it lies entirely within the power and authority of the State to take care of its own fiscal affairs, and of its own local units of government. I know that my first business experience in the municipal bond business was long ago. At that time the City of Olympia, Washington, had been in default of its city bonds for over ten years, but nobody in those days suggested going to Congress to get the medicine. Another case was Owensboro, Kentucky. The city officials of Owensboro, Kentucky, went to prison for over ten years rather than obey the laws of Kentucky, but still nobody went to the federal government seeking its help for the State in ironing out its own problems.

I have taken too much time of the court, I am afraid.

The Court: I think you are extremely modest, Mr. Mason, in saying that you do not understand the intricacies of the technicalities of this situation. You seem to have them pretty well in hand.

Mr. Mason: Well, your Honor, I am a little bit like a bull who has seen a red flag. I have got the drift of it.

The Court: Your execution is pretty good, too. You not only have the drift and inclination, but your execution is pretty good.

Mr. Mason: Thank you, your Honor.

The Court: It has been very interesting, but a number of these matters, of course, are academic. We are just a court [92] of the first instance, sitting here humbly, submissively. We will desire to follow authoritative pronouncements of courts of superior authority in our system, and there is quite a line of demarcation between the principle of the State in validating the contract, and that which was permitted by the government under the bankruptcy clause. Courts have passed on that, I think, decisively. Maybe they will change their minds.

Mr. Mason: Your Honor, that, to my mind, is the basic question here. Has the court passed on that decisively? Because, may I point out that in the Bekins case the court says:

> "'The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted."

How can we reconcile that? The court has never said anything since then. They simply said in the Bekins case that no interference is permitted, under the law, and the Bekins case involved a simple demurrer with no facts.

The Court: Perhaps you can go back there some time, Mr. Mason, and argue to the Supreme Court, and they may change their views on that. But I think they have decided the [93] question in the

Bekins case without any doubt. Let us get back to the kernel of this proceeding. The court indicated before what it would do, Mr. Mason, and it is still of the same mind, that it will do that, and only that.

Mr. Mason: Yes.

The Court: You say in this petition, in concluding it:

> "Should this prayer be wholly denied, Respondent will, if left no alternative, deposit his bonds with this court, but such deposit will be without consent to jurisdiction, without prejudice and without waiving any substantive or procedural vested rights."

Of course, you could not be required to waive those anyway.

Mr. Mason: I see. But I understood if you voluntarily deposited your bonds, it was like throwing down your hand in a card game.

The Court: Of course, when you deposit your bonds here, you do so under the terms exacted by this court in its decree, that you are restrained from pursuing any further procedure with respect to those bonds.

Mr. Mason: Is it as broad as that, the restraint?

The Court: Yes.

Mr. Mason: It says only "restrained as against the District."

The Court: It will be the same as it was in the decree. [94]

I am not going to enlarge that. I am going to adhere to the restrictions that we placed upon all others who were situated as you were.

Mr. Mason: Yes; I would like to point out, your Honor, that under this Siwell v. County of Los Angeles case, cited in my first objection, my basic reason for not wishing to surrender possession of the bonds is because under that Siwell case the court held that until those bonds are actually in the possession of a District and actually canceled physically, the lien created by the taxes on the land can never be erased. Therefore, once the District gets hold of these bonds and physically cancels them, the title companies will again insure titles in the community, which I do not believe they will today.

The Court: If you accept the mandate of the court, and you will have to in order to share in this fund, Mr. Mason, I think as a safeguard the court will impound, or sequester or retain custody of the bonds which you deposit until the time for appeal elapses, and will also keep intact in its registry the moneys which are there now until that time, whereupon the proper disposition of the bonds and the money will be made.

Mr. Mason: Suppose the petitioner, the District, has not appealed?

The Court: It will have a certain length of time, under [95] the law, in which to appeal. I am not going to anticipate anything until it happens.

Mr. Mason: But if they do not appeal, then my bonds are lost, if I understand the court correctly.

The Court: If there is no appeal taken and the decree becomes final, your bonds are in the same category as the other bonds which have been sur-

rendered. There will be no difference whatsoever.

Mr. Mason: And, your Honor, because nine men consent to commit suicide—but I do not wish, certainly, to argue with this honorable court. I am grateful for its consideration. It has been a pleasure, your Honor, and whatever the court orders will have to stand, obviously. Thank you.

The Court: You will prepare an order along those lines, Mr. Downey, that the petition of the District to terminate and conclude and dismiss this proceeding from further consideration will be denied; that the bonds now held and owned by Mr. Mason will be deposited within ten days from the date of the decree; that they will be deposited in full satisfaction under the plan adopted and effectuated by this proceeding, and that at the expiration of the—does the Act fix the time for appeal, or is there a general provision?

Mr. Downey: I think it is the general provision.

The Court: Sixty days time from the entry of the decree, or, seventy-five days from the date of the entry of the decree [96] the court will then consider further disposition of the fund now in its registry, and also further dispose of the bonds deposited by Mr. Mason.

Mr. Mason: Might I inquire what ruling is made with regard to the other bonds?

The Court: I am not making any ruling on those. I am going to keep that money intact, because they are not before the court, the other bondholders.

Mr. Mason: Might it not be possible to have the

ruling with regard to my bonds and those bonds at the same time?

The Court: Well, I am not anticipating anything.

Mr. Mason: Otherwise, I am at a great disadvantage.

The Court: I am not anticipating anything at all, and I am not going to determine the rights of litigants who are not before the court. I want to make secure, as secure as possible, the retention of the funds so that the court can, if it concludes later on to do so, consider those matters.

In other words, let us assume this situation: Assume that there is some appeal from this order or decree that has just been stated, and then the Court of Appeals should take a contrary view or the Supreme Court should take a contrary view to this court. This court is desirous of retaining the status quo of this proceeding so that it can follow the mandate of superior authority. If there is, on the other hand, some review of the proceeding in the nature of an appeal, and the [97] decision of this court should be affirmed, then I want the matter in such shape so that others, who may be able to show that they are in a similar situation to the respondent, may do so.

Mr. Mason: It just seems, your Honor, that the mere fact that I did not ignore the court as the Busches have done is, under the circumstances, putting me at a disadvantage.

The Court: Where are you at any disadvantage?

Mr. Mason: Because the Busches are not required to surrender their bonds, and I am.

The Court: Before they get any of this money, they will be required to surrender their bonds, or show why they cannot do so, or where those bonds are, just exactly as you are required to do.

Mr. Mason: I wonder if Mr. Downey would be willing if the money were returned to the District, to stipulate that this entire proceeding have the same fate that the Cowan discharge had?

The Court: I do not care what Mr. Downey will stipulate to, or what he will not stipulate to. The court is not going to make any decree other than the one which it has just indicated.

Mr. Mason: Thank you, your Honor.

The Court: You will prepare it according to those lines, Mr. Downey, and serve it upon Mr. Mason, so that he can, under [98] the rule, endorse it or make such objections as he desires. You can do that within ten days?

Mr. Downey: Yes, your Honor.

The Court: Very well. Serve it on Mr. Mason.

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Los Angeles, California

Saturday, December 28, 1946, 10:50 a. m.

The Court: Proceed, gentlemen. I think the court indicated, gentlemen, in its minute order just what was in the mind of the court. It related to the last paragraph of Mr. Mason's brief, the brief which was filed on November 12th.

Mr. Mason: November 21st, I believe, your Honor.

The Court: November 12, 1946.

Mr. Mason: November 12th? The last one was November 21st, I believe, your Honor.

The Court: Let me see. I may be looking at the wrong one. That is not the one. As I remember, the clerk did not put either the copy or the original in the file. Do you happen to have a copy of that last brief?

Mr. Mason: I have it here, your Honor.

Mr. Downey: Yes, I have it.

The Court: I do not want to take yours, because you may want to refer to it. I just want to refer to it now so as to get into the record what the court has in mind. The last [101] paragraph, after the argument and citation of authorities, and the discussion, concludes:

> "Wherefore, respondent prays that all the language following 'It is ordered that said petition be denied' in the proposed order be stricken, that the restraint in the final decree be lifted, on the ground that they are without warrant of law, and that the proceeding be dismissed. Should this prayer be denied, respondent requests the opportunity to present further argument, orally, before the proposed order is signed."

The court's understanding was that the court was rather specific in its directions that the relief which it suggested would be available to Mr. Mason was conditional upon his observance of the requirements that were stated in that order, and

when this final brief was received, I gathered the impression that perhaps the court was misunderstood in the matter.

Mr. Mason: If it please the court: It is submitted that no request has been made to this honorable court to order respondent's bonds surrendered. No such suggestion was contained in the petition filed by the debtor, and in the absence of any provision being shown in Chapter IX, which is the base of this proceeding, which authorizes such a request or demand, it is respondent's position that that part of the [102] decree is without support either in State or Federal law. In all of these proceedings there is no precedent known to respondent for such instruction.

Might I respectfully quote from the opinion of the United States Supreme Court in the Bekins case, which is the supposed authority for this proceeding? The court said (304 U. S. 27):

> "It should also be observed that Chapter X, Section 83(e), provides as a condition of confirmation of a plan of composition that it must appear that the petitioner 'is authorized by law to take all action necessary to be taken by it to carry out the plan,' and, if the judge is not satisfied on that point as well as on the others mentioned, he must enter an order dismissing the proceeding. The phrase 'authorized by law' manifestly refers to the law of the State."

That, it is my opinion, is the reason that the court in the Bekins case held the amended Chapter

IX not unconstitutional. In the recent case of Vanston Bondholders Committee v. Green by the United States Supreme Court about three weeks ago, found in 15 U. S. Law Week, page 4063, the United States Supreme Court had before it another bankruptcy case, which involved a claim by certain bondholders for interest on defaulted interest; not merely for their bonds and interest, but interest on defaulted interest. The court in considering [103] the matter found that New York State Courts had held that no such interest on defaulted interest was allowed, and followed the State Court decision in that proceeding. The dissenting judges, or, rather, the minority opinion in this Vanston Bondholders case, which did not disagree with the conclusion of the majority, but which pointed out that the majority opinion reached that decision from a different angle than the minority followed, in the minority opinion said this:

> ". . . To establish uniform laws of bankruptcy does not mean wiping out the differences among the forty-eight States in their laws governing commercial transactions. The Constitution did not intend that transactions that have different legal consequences because they took place in different states shall come out with the same result because they passed through a bankruptcy court."

And: "The law that forces legal consequences to transactions is the law of the several states."

There is considerable language in both the ma-

jority and minority opinions in that case which gives very real support to the point that I am attempting to present, which is there is nothing in the State law authorizing the Merced Irrigation District to call these still outstanding bonds before their fixed maturity date, even at 100 and accrued interest. That would not be approved by any State court, would not be [104] permitted, because it is not permitted by law, and the factors legally decisive, in my opinion, are whether the bankrupt, Merced District, is authorized by the law of its creator, the State of California, to refund now at a discount the still outstanding original bonds, which bear a fixed rate of interest for terms running as long as 1961, with no provision whatever for redemption prior to maturity. Nothing in Chapter IX authorizes a bankruptcy court to order fixed maturity bonds called for payment, which are non-callable under State law.

Section 403(e) explicitly prohibits it, and these bonds do not owe their origin to any federal law, but to the borrowing power of the State of California.

In Reynolds v. Reynolds, 65 Fed. Supp. 916 the court said that Federal Courts at any stage of a proceeding must determine the existence of the elements which are essential prerequisites to invoking thir limited jurisdiction.

The California Supreme Court in Las Animas & San Joaquin Land Co. v. Preciado, 167 Cal. 580, and Universal Consolidated Oil Company v. Byram, 25 A. C. 349, said: Courts of equity do not review

the proceedings of officers entrusted with the assessment of taxation of property.

Essentially, this constitutes a review of the duties of the State taxing officials created by the Constitution of California, fixed in the laws of California, and which clearly come within the exception in the Bekins opinion, in my humble [105] opinion.

In Omaha U. S. Employees Federal Credit Union v. Brunson, 23 N. W. (2d) 717, on June 28 of this year, the court said:

> "The discharge of a bankrupt does not affect securities and they are subject to a judgment or decree in rem, but the creditor applying for such remedy may be required to await the result of the bankrupt's discharge if the bankrupt or assignee insists upon it."

Then the court goes on to say:

> "By agreement a mortgage does not convey title or vest any estate in the mortgage. It is not released by the mortgagor's discharge in bankruptcy."

It is submitted that these bonds, in legal and practical effect, reach ahead of any mortgage on 160 or 170 thousand acres within the Merced Irrigation District; that if this were a proceeding in ordinary bankruptcy, the rule applied in the Fallbrook Public Utility District v. Cowan would be applicable, that the Merced Irrigation District is merely a public trust, without pecuniary interest in the outcome of this proceeding.

There is nobody in court even claiming an adverse right; no one even claiming that a dismissal of this proceeding would impair their rights in any manner, shape or form.

In Hines v. Davidowitz, 312 U. S. 52, at page 67 the [106] United States Supreme Court said:

> " . . . Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The Supreme Judicial Council of Maine in Harvey v. Rackliffe, 41 Atl. (2d) 455, said:

> " 'A contract made by the government,' "— I submit this applies, whether it is the Federal government or a State government which makes the contract—" 'A contract made by the government, in the exercise of its power, to borrow money on the credit of the United States, is undoubtedly independent of the will of any State in which the individual who lends may reside . . ."

Then the United States Supreme Court in 322 U. S. 232, Huddleston v. Dwyer, made a most profound ruling, in which a previous final judgment of the Federal Court was set aside and annulled on the ground that subsequent to the judgment by the Federal Court the State Court had rendered an inconsistent opinion. That case involved a pro-

ceeding filed by bondholders against a city. The bondholders got judgment which became final. Subsequently the State Court of Oklahoma reinterpreted the law under which those street improvement [107] bonds had been issued. Then the bondholders asked the Federal Court some time later: Now that we have this judgment, how may we proceed to enforce it? And here is what the United States Supreme Court said:

> "A judgment of a Federal Court in a case ruled by State law, correctly applying that law as authoritatively declared by the State Courts when the judgment was rendered, must be reversed on appellate review if in the meantime the State courts have disapproved their former rulings and adopted different ones."

There is also very basic and relevant to this proceding, in my humble opinion, the opinion by the Supreme Court affirming the case of Petition of S. R. A., Inc., by the Minnesota Supreme Court, found in 18 N.W. (2d) 442, in which case the Minnesota Supreme Court said:

> " * * * The levying of State taxes upon the title" of private land holders "impairs the exercise of no federal function."
>
> "The private holders of land never enjoy tax immunity as a right but only as an incidental windfall when, and only as long as, the imposition of a State tax in some way impairs, or interferes with, a federal function."

A dismissal of this proceeding would impair no

federal [108] right, would interfere with no private right. There is no person claiming that it would. The mere fact that other bondholders may have elected to sell their bonds to the R.F.C. at a given price, or if they had decided to give them away to charity, cannot be controlling in a matter such as this.

There is a very relevant case, I believe, on that, to the effect that persons cannot grant jurisdiction to a court, that the jurisdiction of the court is determined by the statute under which the proceeding is brought. The California court in Selby v. Oakdale Irrigation District, 140 Cal. App. 171, at page 176, ruled squarely on this very same basic question, your Honor, in a case in which my counsel appeared as amicus curiae. Incidentally, after this hearing by the Appellate Court, a hearing was denied by the Supreme Court. It rose under similar circumstances. The Oakdale Irrigation District had attempted to refund its original bonds and had issued the refunding bonds excepting for perhaps $100,000 of original bonds which did not accept the refunding proposal. Then the District proceeded to levy taxes, claiming that they were levying those taxes for a special fund, the special fund to be used solely in paying the refunding of bonds, thereby attempting to squeeze the original bondholders and leave them out cold. That action by the District was challenged in the State Court, and here is what the State Court said:

> "As to the right of the parties to prosecute this action we agree with counsel that Section

113 (Stats. 1933, p. 800), added to the California Irrigation District Act by an Act of the legislature approved May 9, 1933, is ineffective for any purpose. Its unconstitutionality is so apparent that citation of authority seems needless."

Now, here is the point:

" . . . It is evident that the legislature has no power to limit the right of anyone whose property interests have been invaded, to seek redress through the courts unless joined by others owning like property."

In Evangeline Parish School Board v. Kansas City Life Insurance Co. 153 Fed. (2d) 611, the Fifth Circuit Court decided a case which I believe to be directly in point. That court said: (from Syllabus)

"The issuance of bonds, refunding at a lower interest rate, Louisiana Parish School District bonds bearing fixed rate of interest for a definite term and containing no provision for redemption before maturity, constituted an impairment of contractual obligations in violation of the Constitution."

Here an attempt is being made to call these non-callable bonds, which are non-callable under the law,—not only to call them, but to force their sale at a price accepted by [110] practically all of the other bondholders over ten years ago, without any back interest. It is an attempt not authorized by

State law. In fact, it is in violation of State law, and it is my belief that there is nothing in Chapter IX authorizing it, and that, on the contrary, Section 83(e) explicitly prohibits it.

In Public Market Co. v. City of Portland, the Oregon Supreme Court in 130 Pac. (2d) 624, rendered a very good opinion, which I believe to be squarely in point. The court said: (from Syllabus)

> "A city will not be permitted to escape liability on a contract for work performed by neglecting to levy an assessment in order to create the fund to which the contractor has agreed to look for payment of the contract price.
>
> "It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition upon which his own liability depends, he cannot take advantage of the failure."

It is not suggested by the alleged bankrupt here that it is lacking in authority to levy the taxes required under the statute, pursuant to which this money was borrowed. There is no ceiling on the taxing power delegate by the State to this petitioner. But, in effect, if this order were to stand, your Honor, it would mean that this court is imposing a tax rate ceiling where none exists under State law.

In the case of Puerto Rico v. Rubert Co., 309 U.S. 543, an interesting case involving a land law enacted by Puerto Rico, which was to the effect

that no corporation would be permitted to hold in Puerto Rico more than 500 acres of agricultural land, and that case was bitterly attacked, the United States Supreme Court ruled that the question is purely a question of local and not of federal law.

In St. Louis Southwestern Ry. Co. v. Henwood, 157 Fed. (2d) 337, by the Eighth Circuit Court, which is the latest ruling, I believe, in composition cases, and this involved a railroad reorganization, the court said:

> "Before stockholders can participate, all of the creditors must be cared for in full."

In this proceeding, your Honor, the holders of the still outstanding original bonds are the only creditors who would be adversely affected should this proposed order be signed. All other parties would be affected the opposite of adversely. There is no one appearing, nor has anyone appeared, before this or any court in a Chapter IX proceeding involving the same state law as is involved here who has even suggested that their rigths are even on a par with the rights embodied in these bonds.

In a decision by the District Court of Appeals of [112] California, Ward v. Chandler Sherman Corporation, the court quotes from the California Supreme Court decision in the case of Raisch v. Myers, where the court says:

> "Having determined that appellant's bond is valid but that appellant's remedy by way of an action for foreclosure is barred, two questions remain for consideration in the deter-

> mination of this appeal: (1) Does the lien of the assessment continue to exist despite the fact that appellant's remedy by way of an action for foreclosure is barred? (2) If the lien of the assessment does continue to exist is appellant entitled in this proceeding, in which foreclousure is ordered to satisfy the lien of a superior lien holder, to have an adjudication to that effect and to have a further adjudication that appellant is thereby entitled to the satisfaction of said lien out of the proceeds of the foreclosure sale before any of the proceeds may be paid to respondent Myers? In our opinion, both questions must be answered in the affirmative."

And the court goes on to say, quoting from Chilson v. Jerome, 102 Cal. App. 635:

> "It is a general rule of construction that a statute having a special application controls a general one without regard to the dates of their passage and [113] that an act general in its characted will not annul the provisions of one covering a special subject, even though it seems to cover the same general ground."

Therefore, I submit that this retrospective consent by the State of California to Chapter IX proceedings does not, in words, or otherwise, say that any of the provisions of the California Irrigation District Act are thereby repealed or set aside, but it only authorizes the Federal Court to exercise such jurisdiction as is authorized by Chapter IX.

Now, Chapter IX, according to the Bekins case, is subject to State law. So that we have a very complex situation, and which is in point with where the effect fall should this proceeding be dismissed. May I quote from the hearings of last May before the House Committee on the Judiciary, when it was being agitated that this Chapter IX be made permanent legislation. This Chapter would have expired June 30th had this amendment not occurred. This is the testimony of the chief counsel of the Reconstruction Finance Corporation, the gentleman who has never been willing to appear in any of these proceedings, nor to allow the R.F.C. to appear, although attempts have been made to subpoena them, and they have contended they are beyond the reach of the court. Mr. J. Forest Campbell is the gentleman's name. His testimony appears on page 17 of the hearings upon HR-4307, dated May [114] 24, 1946, on a bill to amend Sections 81, 82, 83 and 84 of Chapter IX of the Act entiled, "An Act, and so forth," approved July, 1898, as amended. Mr. Campbell says:

> "I have been a member of the committee for a number of years, and was a member at the time that this bill was passed," meaning the amended Chapter IX.

I do not believe Mr. Campbell was with the R.F.C. at the time the original chapter IX was enacted. I am not sure about that. But he means this bill, Sections 81, 82, 83 and 84 of what I believe was the old Chapter IX. He says:

> "I agree with the statements of Parkhurst regarding notice to landowners, for the reason that these proceedings are instituted for the benefit of landowners. They are the only parties who are taxed, and are the only ones who receive benefits from the proceedings."

That, I submit, is rather conclusive. A District receives no benefit from this proceeding. The District is without pecuniary interest. It is merely a public interest, whether the District obeys the law and collects the taxes or not, as required by the Constitution, and the laws of California will not interfere with any right of the Tax Collector. A tax collector ordinarily is not allowed to exercise discretion in the collection of taxes where that collection is made mandatory under the law. This is a case, in effect, where [115] public tax collectors, state tax collectors, are asking this court for permission to violate the laws of their sovereign. I cannot bring myself to believe that that was the intention of the United States Supreme Court in holding Chapter IX not unconstitutional.

In my original request dated October 26, your Honor, I prayed this honorable Court:

> "Wherefore, petitioner respectfully submits that the bonds and past due coupons held by him, as listed in his proof of claim, are in no instance and under no law 'barred by the Statute of Limitations' " and so forth.

That is the brown-covered one there, I believe; the

last page of the one dated October 26. I believe it is in a cover like this one, your Honor.

The Court: Yes, I have that, but it does not seem to have the same file mark.

Mr. Mason: I thought it might be identified by the clerk on the cover.

The Court: October 25th.

Mr. Mason: October 26th, this is dated.

The Court: This is headed, "Objections of J. R. Mason (a creditor) to the Petition."

Mr. Mason: That must be it.

The Court: Yes. It is dated at the end October 26th, but [116] is marked Filed October 25th. There must be some little discrepancy there.

Mr. Mason: Yes. In the closing paragraph, your Honor, I request the court as follows:

> "Wherefore, petitioner respectfully submits that the bonds and past due coupons held by him, as listed in his proof of claim, are in no instance and under no law 'barred by the Statute of Limitations', and prays that the funds now with the Registrar be not given to the Bankrupt who has no right to that money, and prays that the restraint referred to in paragraph IV be stricken from the decree, and that this Honorable Court leave to the Courts of California the matter of fixing the rights of the parties involved, and that the proceeding brought under 11 U.S.C.A. 401-403 be terminated."

My prayer at present is unchanged from that.

If I did change the substance of it in the final prayer, it was an oversight, your Honor, but this court having ruled that the statute of limitations is inapplicable to these bonds, on the strength of the California Supreme Court ruling, and the Seventh Circuit Court of Appeals in another composition proceeding, which held that the purpose of the proceeding was to avoid administration in bankruptcy and to free property from the jurisdiction of the Bankrutpcy Court, and which quotes [117] from 289 Federal 732, saying:

> " . . . Only when the composition is not confirmed"— I think this is quite important, your Honor— "Only when the composition is not confirmed shall the estate be further administered in bankruptcy; and this court has held that with the signing of the order of confirmation the bankruptcy court loses jurisdiction."

Now, whether that rule should apply equally in this proceeding, I would not presume to suggest to your Honor, other than to point out that it appears to be the rule that when the final decree has been signed in a proceeding of composition that the court is without further jurisdiction.

In this case jurisdiction appears to be reserved for one purpose, and one purpose only, and counsel for the District made it very clear. They said in their letter to this honorable Court, dated November 12, 1946, "However, we do not make our case upon that order." That is the order in which

the court said, in effect, upon the expiration of the statute of limitations they might report back to the court for such action as to it was then deemed wise, and they conclude that sentence by saying, "by virtue of which we claim that the court cannot exercise discretion in the premises, but can only apply the law as it exists."

Your Honor, I adopt that sentence as my own. I submit [118] that under the decision in the Bekins case that it is the State law which is controlling, and the fact that nothing in the State law authorizes the redemption of these bonds prior to their maturity, even at full accrued interest, let alone at about 30 per cent of the value of the claim, because the value of these claims today with the 12 years defaulted interest, your Honor, is over $1,500 per bond versus a proposed payment of $500.

In case your Honor has never seen one of these bonds, perhaps he would be interested in the State certificate which is affixed to the bond, and which makes these bonds irrevocably a lawful investment for all trust funds, all savings banks, all insurance companies, and lawful for any funds which may be invested in State of California bonds; and irrespective of anything this court may do, these bonds will remain lawful investments for savings banks, under California law.

So we would have the interesting paradox of State bonds which the Federal Court says are in a category, say, of confederate money, but still are legal tender within the State. May I read the State controller's certificate on this bond:

"Sacramento, California, October 6, 1924.

"I, Ray L. Riley, controller of the State of California, do hereby certify that the within bond, No. 10860 of First Issue, Fourth Division, of the Merced Irrigation District, issued January 1, 1922, [119] is, in accordnace with an Act of the Legislature of California, approved June 13, 1913, a legal investment for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, the State School funds and any funds which may be invested in County, municipal or school district bonds, and it may be deposited as security for the performance of any act whenever the bonds of any county, city, city and county, or school district may be so deposited, it being entitled to such privileges by virtue of an examination by the state engineer, the attorney general and the superintendent of banks of the State of California in pursuance of said Act. The within bond may also, according to the Constitution of the State of California, be used as security for the deposit of public money in banks in said State.

"Signed Ray L. Riley,
"Controller of State of California."

It is submitted that this certification by the State is unqualified. It is not subject to revocation, and these are the only bonds ever issued in the State of California. I don't mean the Merced Irrigation

District, but bonds issued under this Irrigation District law are the only bonds carrying such an irrevocable State endorsement. This bond calls for a fixed [120] maturity of 1961. There is no provision even hinted that there is anything in the law authorizing its redemption before that date, and even if the District were to try to raise money to pay off this bond today, it would not be allowed under the law to levy the taxes to pay this bond. Those taxes may not be levied until 1960. The District cannot levy taxes now to meet contracts payable in 1961. The taxes have not been levied to satisfy this bond. And if there is one thing that is fundamental in municipal bond contracts, it is that the holder of the municipal bonds has the right to the honest execution of the laws under and pursuant to which the contract was issued. Here is a case where no attempt has been made to levy the taxes. There is no claim they cannot do so.

Furthermore, may I point out to your Honor that this species of taxes is distinguishable from other species of taxes, and has a different economic effect. This species of taxes never takes anything from a land user as a user of land, but only takes from what would otherwise be capitalized into speculative prices for land titles. This kind of a tax is a diametrical opposite of a species of tax based upon ability to pay. This tax would tend to reduce land speculation. May I quote from a rather well-known man named Herbert Spencer, who said in a famous book, "Social Statics":

"Meanwhile, we shall do well to recollect that there are others besides the landed class to be [121] considered. In our tender regard to the vested interests of the few, let us not forget that the rights of many are in abeyance, and must remain so, as long as the earth is monopolized by individuals . . . We find that if pushed to its ultimate consequences, a claim to effective possession of the soil involves a land-owning despotism. And we find lastly, that the theory of co-heirship of all men to the soil is consistent with the highest civilization; and that, however difficult it may be to embody that theory in fact, equity sternly commands that it be done."

Here is a proposal which would only result in creating unearned increment to those not locally entitled to such a windfall. And irrespective of whether 99 per cent of the other investors in these bonds decided to accept the R.F.C. price or give their bonds away cannot change the fundamental question.

In In re Anthony, 42 Fed. Supp. 312, the Court said: (from Syllabus)

"Generally, effect of bankrupt's discharge on particular debt is determined in plenary action brought in court other than bankruptcy court by creditor to enforce debt against discharged bankrupts, and an essential part of trial of such action is a [122] determination of effect of discharge when pleaded by bankrupt as an affirmative defense."

Citing Federal Rules of Civil Procedure, Rule 8(c), 28 U.S.C.A. following Section 723(c) (Bankruptcy Act Chapter 14, 17, 11 U.S.C.A. Sections 32 and 35.)

A case involving a similar conflict of authority between Federal and State powers was involved in Federal Deposit Insurance Corporation v. George-Howard, decided in 55 Fed. Supp. 921, where the court said: (from Syllabus)

> "A proceeding by Federal Deposit Insurance Corporation to recover from assets of State Bank . . . did not 'arise under the laws of the United States', and District Court was without jurisdiction thereof, notwithstanding statute providing that suits to which corporation is a party should be deemed to arise under laws of United States."

Judicial Code Section 24.(1)(a), 28 U.S.C.A. Section 41(1)(a); 12 U.S.C.A. Section 264(j).

> "A Federal Court does not have jurisdiction of suit merely because statute provides that suit shall be deemed to arise under laws of the United States, since question of whether given controversy arises under a law of the United States is a 'judicial question.' "

The court held that a State Bank, being organized under [123] the laws of the State, that its claims against the State Bank would have to be settled in the State Courts.

Now, if that be true of a State Bank, how much

more must it be true of a State taxing authority, which has been delegated the sovereign power of the State to tax land, which is perhaps the highest exercise of sovereignty.

May I close by praying that the prayer embodied in this October 26 petition be granted, as requested in the last paragraph.

With regard to the request that the restraint embodied in the final decree be lifted, I shall not—I am searching for the best word—either that restraint is authorized by Chapter IX, or it is not authorized by Chapter IX. It is the view of the best advisers with whom I can make contact that Chapter IX does not authorize a restraint in the final decree, that a restraint is authorized only in the interlocutory decree, and that Chapter IX does not contain any provision for incorporating restraint in the final decree. As to the final decree, the parties are, in my opinion, to be left in the State Court to determine the actual rights under the composition. Congress did not mean, and Congress gave this honorable Court no jurisdiction over the bankrupt. This court can issue no order involving the bankrupt unless the bankrupt accepts such order in writing. The bankrupt has a veto power. I hate to bring the Soviet veto power in here, [124] but the bankrupt has a veto power at every stage of the proceedings.

Did Congress intend it to have only that veto power? If so, it would be completely contrary to all of the precedents. Here is a case where it is not I who owes money to the bankrupt, but the

other way around. Does jurisdiction lie in this court over the creditor to a greater extent than it exists with respect to the bankrupt? Can it only be that this court has jurisdiction to compel performance from the creditor, but has no power to compel performance from the debtor?

Chapter IX is very, very explicit in that regard, as your Honor, of course, knows. It provides exclusively in sub-section (e), where it says:

> "Provided, however, that the plan, as changed or modified, shall comply with all the provisions of this Chapter, and shall have been accepted in writing by the petitioner."

Therefore, any change in the final decree or any change in the plan of composition, as submitted to the court, cannot be made without the consent in writing of the petitioner, and such an order as is proposed would be a departure from anything requested in the plan presented to the court.

Surely the time has not come when it is unlawful to invest in and hold bonds of the State of California, or one of its [125] lawfully constituted subdivisions; bonds which are completely immune from federal income taxation. The controlling decisions, your Honor, today are to the effect that if the federal courts would deprive us of even five cents of interest payable under those bonds that would be repugnant to the Constitution. But here it is not only to deprive us of five cents, but of all of the interest and 50 per cent of the principal.

I will close by urging that there is no one claim-

ing that a compliance with this prayer would impair their rights.

The Court: I will hear from you for a very few minutes, Mr. Downey. We have already consumed 55 minutes.

Mr. Downey: Yes, your Honor. I can be very brief.

If the court please, the court's decision in this matter was that there was no applicable legal statute of limitations applying, as we contended, but that that situation was to be governed by principles of equity. I think the court fully recognized that it cannot compel Mr. Mason to surrender his bonds and accept the composition rate, and I think it so stated. I think the court's opinion was that Mr. Mason had consented to do so. Evidently that is not the case, and that being so, I would like to propose an order or a decision which fully embodies the court's feeling in this matter, which is thoroughly supported by law and definitely meets Mr. Mason's objections, although perhaps will not meet with his [126] approval.

I would like to propose that an order could be very feasibly and properly entered, requiring the bondholders to surrender their bonds, say, within 30 days and accept the money at a composition rate, or in the event they do not do so, that the money revert to the District. Just such a provision has been amply sustained and upheld by the higher courts, and in three cases reviewed by the Supreme Court, when it denied certiorari. In those cases, of course, a year was allowed from the time of the

final decree, and if in the year the bondholders did not accept the money at the composition rate and deposit their bonds, the money was to revert to the District or to be used for the District's interests.

We would like to propose that the court could now very feasibly direct that in a period of time, let us say, 30 or 60 days that such be done, and if it were not done, that the money then revert to the District. We think that could be done with regard to all of the bondholders. The court would undoubtedly desire to provide that personal notice or personal service of notice of that be served upon the other bondholders besides Mr. Mason, which, if it is possible to be done, we could arrange to do.

In that regard I would like to mention to the court that since the last hearing we have again attempted to get in touch [127] with these other bondholders and have not been successful. The attempts were by phone, however, and undoubtedly they could be contacted personally. There is one unknown bondholder here. I might point out that bond matured in 1940, and even were the composition proceedings not proper, they would be barred now by the statute of limitations. Of course, no notice could be given there.

I think, therefore, that a rather feasible solution to the situation, as it now exists, could be met by such an order, that the bondholders accept the composition rate and surrender their bonds within a specified time, or, in the event they do not do so, the money then revert to the District. Mr. Mason's position is that he desires the proceedings termin-

ated and desires our petition denied in all respects. We, of course, take the position that the proceedings cannot be terminated with the money in the registry of the court unclaimed either by the District or by the bondholders. The court cannot feasibly terminate the proceedings and just leave that money sitting there. So I submit that the course proposed by us would meet with that objection and would eventually lead to a termination and winding up of this proceeding. We further submit that is in line with the court's opinion in the matter, and would be a feasible order and a proper one in this instance.

The Court: I will give you five minutes in which to reply, [128] Mr. Mason.

Mr. Mason: If it please your Honor: The suggestion that this procedure had met with approval in previous proceedings is slightly inaccurate. The first test of this idea of their being called, say, by 2:00 o'clock on Tuesday or get nothing, arose in the Anderson-Cottonwood case, and counsel in that case raised the point but did not argue the point in the brief, whereupon the Circuit Court of Appeals ruled they would not consider the point. The next case that came along involving the same situation, I believe, was the Palos Verdes Irrigation District case, where the Circuit Court of Appeals, in error, said they had already ruled on the point in the Anderson-Cottonwood case. That is the origin of the belief that this procedure has been sanctioned, and I believe it stems from a false base.

Might I ask counsel for the District if under his

proposal he would be willing to have the restraints now embodied in the final decree stricken?

Mr. Downey: We, of course, would not. The final decree we feel is accurate and legal as it stands, and we will cite three cases which we feel unquestionably rule that the court can fix a specific time limit as the time in which the bondholders can claim their money, and in the event they do not so claim, it is to revert to the District, or, as in one of the cases, it is to revert to the Reconstruction Finance [129] Corporation for the benefit of the District. It is my opinion that those decisions are thoroughly determinative of this situation and clearly authorize it, and hold such provision to be legal. In all three of those cases certiorari has been denied by the United States Supreme Court, and rehearings were denied by the United States Supreme Court in all three cases, also.

Mr. Mason: May I point out, your Honor, that the originally proposed final decree submitted by this District contained a limitation of one year, which was stricken from the final decree. It is rather late in the day for petitioner to come in now and request that the final decree be now amended to correspond to the original proposed final decree, which was amended with petitioner's consent, and in which the provision for a time limitation was stricken. It is just as late to amend the decree today in that respect, as it would be at any other, in my opinion, and either that final decree became final, or it is subject to revision. If it is subject to revision now in any respect, I submit that the argu-

ment which I have submitted should be given consideration by this honorable court on the point that there is no authority in the petitioner to now execute the plan, when the carrying out of that plan involves the violation of the State law.

Mr. Downey: Could I just say this?

Mr. Mason: Just one second. [130]

The objections to the proposed final decree, dated July 9, 1941 state:

> "Said creditor objects to that part of the proposed Final Decree which provides a period or time limit of twelve months for presentation of outstanding old obligations to the Clerk of this Court as Registrar for payment pursuant to the Plan of Composition, and objects to any time limit for such presentation becoming a part of the Final Decree, and objects to that part of the Final Decree which would bar from participating in the Plan of Composition if not presented within a period of twelve months, or any period of time."

In the proposed final decree it was proposed to delete the provision which petitioner now wishes to insert, which we submit this District——

Mr. Downey: Just a moment. We do not intend to propose that the final decree be revised or altered. The final decree provides that upon the running of the statute of limitation to those still outstanding obligations, if any, has run, the petitioner "may so report to this Court for such further action respecting said money remaining in the hands of the

Registrar as this Court may determine to be proper and for the final closing of this proceeding."

It is pursuant to that language that we now make application [131] for such a direction, and we think that a direction that the money be taken within a specified period adequately falls within that language, is equitable and is actually supported by legal authority, and that some such provision must necessarily be necessary at some stage of the proceedings, so as to eventually terminate this matter in one way or another.

Mr. Mason: May it please your Honor——

The Court: I do not care to hear any more, gentlemen. I have been listening to you for an hour and fifteen minutes now. The court has throughout these proceedings, from their inception way back in 1939, in several instances rendered its opinions, and in others has stated the outcome in minute orders, when appropriate, has approved forms and signed orders, when requested.

In the findings of fact and conclusions of law made February 21, 1939, reference, of course, was made to the memorandum opinion of the court filed January 10, 1939. In that opinion the court, in pari materia, stated:

> "This bankruptcy proceeding was filed in this court June 17, 1938.
>
> * * * *
>
> "The constitutional power of Congress to establish 'uniform laws on the subject of bankruptcies throughout the United States' is paramount to powers of the States and it is firmly

established in the United States [132] that the 'subject of bankruptcies' is nothing less than the subject of the relations between an insolvent or nonpaying debtor and his creditors, extending to its or their relief."

Citing Continental Bank v. Rock Island Railway, 294 U.S. 648.

"And when the jurisdiction of the Federal Court is constitutionally invoked under an existing Act of Congress relating to the subject of bankruptcy, as it has been in this proceeding, it is exclusive of all other courts; U. S. Fidelity, etc., Co. v. Bray, 225 U.S. 205; and particularly is this the case when, as here, the State Court has not proceeded to the making of any findings of fact or to the entry of any decree adjudging or purporting to adjudge rights.

"A court of bankruptcy itself is powerless to surrender its control of the administration of the estate."

Citing Isaacs v. Hobbs Tie & T. Co., 282 U.S. 734; Moore v. Scott (C.C.A.9) 55 F. (2d) 863; In Re A. C. Wagy & Co. (C.C.A.9) 20 Fed (2d) 638.

"We think that the State Court proceeding from any point of view is wholly immaterial to this bankruptcy matter." [133]

Thereafter, pursuant to the opinion, findings of fact were made and signed by the court and entered in the proceeding.

The conclusions of law stated therein, and indicated by the document to which I have already adverted, dated February 21, 1935, read as follows:

"CONCLUSIONS OF LAW"

"As Conclusions of Law from the foregoing facts, the Court finds and concludes that petitioner, Merced Irrigation District, is entitled to an interlocutory decree and judgment approving and confirming said plan of composition as proposed and presented and contained in said petition and that said plan of composition and said decree of confirmation shall become and be binding upon all creditors affected by the plan if within the time prescribed in said decree or such additional time as the judge or the law may allow, the money to be delivered to the bondholders under the terms of the plan shall have been deposited with the court or such depository as the court may appoint or shall otherwise be made available for the bondholders affected by the plan. That thereafter upon compliance with the interlocutory decree petitioner shall be entitled to a final decree as provided by law."

The interlocutory decree was entered, and thereafter [134] further decrees and judgments were entered.

In the interlocutory decree, dated February 21, 1939, the following is the concluding paragraph:

"That any and all holders of the outstanding bond indebtedness of petitioner district be and are hereby enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien, by legal proceedings or otherwise, which they may have against petitioner or against any of the lands situated within petitioner district and held by individuals."

Then in the decree which was entered later—I don't know if the final decree is in this file, Mr. Clerk.

The Clerk: It should be, your Honor.

The Court: You think it is in the file?

The Clerk: Yes.

Mr. Mason: I have a copy of the final decree, your Honor.

The Court: The files are somewhat mixed up, I ascertained from looking at them sometime ago.

Mr. Mason: I believe this is a copy, if you wish to refer to it.

The Court: In the final decree, among other matters determined therein, the following appears:

"2. That the sum of $54,506.95 paid to the Clerk of this Court as Registrar herein by said [135] disbursing agent be disbursed by the Registrar for the purpose of taking up and retiring, in accordance with the plan of composition approved in this cause, such remaining outstanding old obligations of petitioner as are affected by the plan of composition and

which may be presented to the Registrar for that purpose. One year after date of entry of this decree and annually thereafter until otherwise ordered by the Court, Merced Irrigation District shall submit herein a report showing the obligations affected by the plan of composition which have been taken at the composition rate during such year and the Registrar shall likewise, at least once a year, submit a similar report of bonds taken up and the balance, if any, of money remaining in his hands. If any money shall remain in the hands of the Registrar after petitioner claims that the Statute of Limitations applicable to its still outstanding obligations, if any, has run, petitioner may so report to this court for such further action respecting said money remaining in the hands of the Registrar as this Court may determine to be proper and for the final closing of this proceeding.

"3. That except as provided in paragraph 2 hereof, all the old bonds and other obligations of [136] petitioner affected by the plan of composition approved herein whether heretofore surrendered and cancelled or remaining outstanding and by whomsoever held are hereby cancelled and annulled. That the holders of said bonds be and they are hereby permanently and forever restrained and enjoined from asserting any claim or demand whatsoever thereon as against petitioner district or its offi-

cers or against the property situated therein or the owners thereof."

* * * *

"5. That petitioner has made available within the time and manner prescribed by the interlocutory decree herein all money and consideration to be delivered to creditors under the plan of composition approved in said interlocutory decree and in full compliance with said interlocutory decree and Chapter IX of the Bankruptcy Act. That all acts and proceedings required to be taken by petitioner under the terms of the plan of composition approved in this cause and the interlocutory decree have been duly and regularly had and taken and petitioner has duly and regularly complied with all requirements of Chapter IX of the Bankruptcy Act of the United States and with all orders of the court pertaining to it herein. That said plan of composition is binding upon [137] all creditors affected by it whether secured or unsecured and whether or not their claims have been filed or evidenced and if filed or evidenced whether or not allowed, including creditors who have not, as well as those who have, accepted it.

"Petitioner, Merced Irrigation District, is hereby discharged from all debts and liabilities dealt with in the plan of composition approved in the interlocutory decree herein."

The history of this instant proceeding is also reflected by the files of the court, and on June 2nd, 1941, the following order was made, as far as it is applicable here:

"Upon reading and filing the Report and Account of E. E. Neel, as Disbursing Agent herein under and pursuant to Interlocutory Decree dated February 21, 1939;

"It Is Ordered, that the sum of $54,506.95 tendered by said E. E. Neel, as Disbursing Agent, with said report and account, be accepted by the Clerk of this Court as Registrar and thereafter held and paid by him to the holders of outstanding bonds of petitioner above named in accordance with Interlocutory Decree herein dated February 21, 1939, and such further or other decrees and orders of this court as may be made herein." [138]

The fund was accordingly lodged, and was diminished by other payments that were directed to be made therefrom from time to time to those whom the court concluded were entitled to receive them.

Finally, the matter came on for further proceedings under the petition of the Merced Irrigation District, in which the allegations were made, substantially, that under any construction of statutes of limitation the period of limitation had expired, and that the matter should be determined by an appropriate order with respect to those funds still remaining in the registry. That matter came on after notice, and Mr. Mason appeared in propria persona.

The court concluded at the time that further time should be given so that the fullest measure of equity under the law might be available to those whose bonds and obligations were involved in this com-

position and in this bankruptcy proceeding brought pursuant to Chapter IX of the Act.

On October—the date is not stated in this carbon copy of the minute order, but I believe it was October 29, 1946, according to some red lead pencil writing on this proposed order—the following minute appears:

> "This matter coming on for hearing on petition of Merced Irrigation District for disbursement of funds, filed July 30, 1946, pursuant to notice of hearing filed August 20, 1946, and objections of [139] J. R. Mason to said petition, filed October 28, 1946; Stephen W. Downey and John Downey, Esqs., appearing for the Petitioner; J. R. Mason, a creditor, appearing in propria persona."

I will not read some matter that is simply descriptive of further appearances, but it closes with the following paragraph:

> "The Court propounds a question to Mr. Mason as to whether he is willing to accept his money on the same parity as the other bondholders. Mr. Mason asks for 15 days' time to answer, and the court orders this matter continued to November 15, 1946, at 10:00 A.M. for further proceedings on this phase of the matter."

Then on November 15, 1946, the following appears in the file as the clerk's record of the proceedings on that day:

> "This matter coming on for further hearing

on Petition of Merced Irrigation District for disbursement of funds, filed July 30, 1946, pursuant to notice filed August 20, 1946, and on objections of J. R. Mason, filed October 28, 1946, thereto; Messrs. Downey, Brand & Seymour, by Stephen M. Downey, Esq., appearing as counsel for the petitioner; J. R. Mason being present in propria persona; on motion of Attorney Downey, and with consent of respondent [140] J. R. Mason, it is ordered that the following documents be considered as evidence on this hearing; Interlocutory Decree and Appeal therefrom; Final Decree and Appeal therefrom; Objections of J. R. Mason to Final Decree; the herein petition; Order for Notice on this Petition; Notice of Hearing this Petition; and Proposed Final Decree and objections thereto.

"Attorney Downey and Respondent Mason argue, and it is ordered that the petition herein is denied; that the bonds now held and owned by Respondent Mason be deposited within ten (10) days from date of the Decree made pursuant to this hearing; that they will be deposited in full satisfaction under the plan adopted and effectuated by this proceeding; at the expiration of 75 days from the date of entry of said decree, the Court will then consider further the disposition of the fund now in its Registry and also will further consider disposition of the bonds deposited in the registry; Decree to be prepared by Attorney Downey within ten (10) days from this date."

Thereafter counsel for the petitioner submitted a proposed form, and action thereon was withheld, and on the 14th of December of this year, the following proceedings appear, as [141] are reflected by the file:

> "On the consideration of the proposed order relating to the action of the Court pursuant to proceedings of November 15, 1946, and of the objections of Respondent, J. R. Mason, to said proposed order filed herein November 22, 1946, the court is in doubt because of the statements in the last sentence of the objections of Respondent to the order proposed by Petitioner as to the attitude and position of Respondent, J. R. Mason, and therefore, in order to finally and decisively ascertain the attitude of said Respondent, J. R. Mason, and in conformity to his request in said objections of Respondent to the order proposed by Petitioner, it is now ordered that said Respondent and Petitioner Merced Irrigation District appear before this Court in courtroom No. 8, United States Post Office and Court House, Los Angeles, California, on Saturday, December 28, 1946, at 10:00 o'clock A.M., for further and final proceedings in the matter of the Petition of the Merced Irrigation District filed herein July 30, 1946. The clerk is directed this day to transmit notice hereof by U. S. mail to Petitioner Merced Irrigation District and to Respondent, J. R. Mason."

It now appears that the court misapprehended

Mr. Mason's [142] attitude in the premises, and it now appears, and the court finds, that respondent Mason is not willing to comply with the suggested direction of the court, as indicated by the record.

The court further concludes that laches have occurred, and that there has also been sufficient time under any applicable statute of limitations for the determination of the money remaining in this fund.

The court concluding that it had jurisdiction over its fund, and it is the fund that is in question in this proceeding at this time, I would not be inclined to accept the suggestion of counsel for the District because of a desire to afford to those bondholders, including Mr. Mason, the opportunity to share in this money in preference to the Merced Irrigation District. But it must be done on the basis of the court's direction and not upon any other theory. Apparently, that is not satisfactory to Mr. Mason, so that counsel for the District will prepare an order along the lines suggested in his argument, and present that for signature, and it will be signed.

You may have an exception, Mr. Mason.

Mr. Mason: May it please the court: I had understood the court had ruled at the last hearing in this case that counsel had failed completely to establish the point that any statute of limitations was applicable to the still [143] outstanding bonds, and that the court decided against the petitioner on that point, and also decided that petitioner had no equity interest in the funds on deposit in the registry of this court.

The Court: You will prepare the decree, Mr.

Downey. If you can present it before December 31st, I should like to have it, as I should like to have this matter closed so that we can report it during this year as a closed case in this court.

Mr. Mason: Might I also point out that these other bondholders, having had no notice of this proceeding, and this proceeding being entirely beyond the petition filed with this honorable Court by petitioner, the petition of July 24, 1946, the sole request there being:

> "Wherefore, petitioner prays that the unexpended funds in the hands of the Registrar, to-wit, Thirty-Two Thousand Eight Hundred Eleven and 59/100 Dollars ($32,811.59), be paid by said Registrar to petitioner and this proceeding finally terminated and closed."

I submit that was the only prayer about which any notice was given to these other bondholders, and I submit to your Honor that before there is any such drastic device as forfeiture invoked against them, it would seem to require their being given notice and proof of notice. But I demur on this ground, your Honor, that under the controlling decisions, with [144] all due respect to the ruling by this Honorable court, the still outstanding bonds of this district come under the heading of non-dischargeable obligations under other provisions of the Bankruptcy Act, prohibiting the court from interfering with the collection of taxes. I appreciate this court's patience. This is a hard case; a very hard case. It involves plowing new fields of law from the traditions.

The Court: Mr. Mason, I want to ask you one question. Do you have any authority to appear for anybody excepting yourself?

Mr. Mason: No.

The Court: Very well, so long as the reporter got your answer. I understood you to say, "No."

Mr. Mason: I definitely do not have, your Honor. I do not even know these other bondholders, and have never met them or talked with them in my life. But when I first appeared, I tried to appear not only on my own behalf but others similarly situated; not that I have their authority to do so, but I was formerly in the investment banking business and distributed these bonds originally in large measure. I believed in them.

This has been a very, very interesting case. I might add that the Tax Court originally passed on the original Chapter IX, your Honor, and said that it was beyond the power of Congress. The Circuit Court of Appeals reversed the District [145] Court; then the United States Supreme Court reversed the Circuit Court of Appeals. In other words, I am not convinced that the last word has been said on this question by the United States Supreme Court. I would like for the United States Supreme Court to have another opportunity to clarify this, because there is a question of sovereignty here, and I do not believe it was the intent of that court to allow Federal Courts to permit State taxpayers to escape paying State taxes. That would not be any more consistent than it would be to allow State courts to

permit Federal taxpayers to escape the payment of Federal taxes.

I do appreciate this court's great indulgence and patience, because I know this is a hard case. I do wish to file an exception to the order, as proposed.

The Court: You may have an exception. [146]

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CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 12th day of February, A.D. 1947.

/s/ MARIE G. ZELLNER,
Official Reporter.

[Endorsed]: No. 11554. United States Circuit Court of Appeals for the Ninth Circuit. J. R. Mason, Appellant, vs. Merced Irrigation District, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Filed February 28, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

Case No. 11554

J. R. MASON,

Appellant,

vs.

MERCED IRRIGATION DISTRICT,

Appellant.

## STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

Appellant hereby designates as the Statement of Points on which he intends to rely in this Appeal the "Statement of Points on Appeal" which is included in the Transcript of Record on Appeal prepared by the Clerk of the U. S. District Court and filed herein on or about February 28, 1947.

Dated, March 5, 1947.

/s/ J. R. MASON,
Appellant in Pro se.

[Endorsed]: Filed Mar. 5, 1947.

[Title of Circuit Court of Appeals and Cause.]

## DESIGNATION OF CONTENTS OF RECORD ON APPEAL

The appellant designates the following as those parts of the record on appeal as necessary for the consideration of the points upon which he intends to rely in this appeal:

1. Petition of Merced Irrigation District dated July 24, 1946.

2. Objections of J. R. Mason to Petition, dated October 26, 1946.

3. Letter dated November 12, 1946, to Judge McCormick from Downey, Brand & Seymour, counsel for petitioner.

4. Minute Order Entered November 15, 1946.

5. Order (Proposed) Denying Petition, directing J. R. Mason to surrender his bonds, dated November, 1946.

6. Objections of J. R. Mason to Order proposed by petitioner, filed November 22, 1946.

7. Decree, Order and, Filed and Entered December 31, 1946.

8. Order Staying Execution of Decree of December 31, 1946.

9. Stipulation re Use of Records in Other Appeals.

10. Notice of Appeal from Decree dated December 31, 1946.

11. Bond for Costs on Appeal.

12. Names and Addresses of Attorneys.

12-a. Also Clerk's Certificate.

13. The following portions of Reporter's Transcript:

Page 2, all, to page 4, line 11.

Page 20, line 7, to line 25, both inclusive.

Page 22, line 7, to line 15, inclusive.

Page 33, line 2, to page 35, line 20.

Page 36, line 23, to page 37, line 14.

Page 41, line 15, to page 45, line 15.

Page 62, line 14, to page 64, line 25.

14. Statement of Points and Assignment of Errors.

15. Designation of Contents of Record on Appeal.

16. Certificate of Clerk of U. S. District Court to Transcript on Appeal.

Dated March 5, 1947.

/s/ J. R. MASON,
Appellant in Pro Se.

[Endorsed]: Filed March 5, 1947.

[Title of Circuit Court of Appeals and Cause.]

## APPELLEE'S DESIGNATION OF PORTION OF RECORD TO BE PRINTED

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Merced Irrigation District, Appellee herein, by its Counsel and pursuant to Section 6 of Rule 19 of this Court files this designation of the additional portions of the transcript of record herein which shall be contained in the printed record:

Affidavit of Compliance by Debtor with Requirements of Order and Decree.

Affidavit of Mailing of Notice of Hearing (Robert G. Giessler).

Affidavit of Publication in Merced Sun-Star.

Affidavit of Publication in The Wall Street Journal.

Decree, Final, Discharge and Order Settling Report and Account of Disbursing Agent dated July 15, 1941.

Decree, Final, Discharge and Order Settling Report and Account of Disbursing Agent, Proposed, dated 1941.

Decree, Interlocutory, dated February 21, 1939.

Minute Order Entered October 29, 1946.

Minute Order Entered December 14, 1946.

Minute Order Entered December 28, 1946.

Notice of Appeal from Final Decree dated July 15, 1941.

Notice of Appeal from Interlocutory Decree.

Notice of Hearing of Petition of Debtor.

Notice of Hearing to be held on December 28, 1946.

Objections to Proposed Final Decree dated July 9, 1941.

Order fixing October 29, 1946, for hearing Petition of Debtor.

Return of Service by Marshal of Order and Decree.

Reporter's Transcript of Proceedings on October 29, November 15 and December 28, 1946:

Page 18, line 11, to page 20, line 7, and concluding with ". . . I have followed them."

Page 21, line 10, to page 21, line 25.

Page 45, line 24, to page 55, line 14.

Page 67, line 20, to page 99, line 4.

Page 101, line 9, to page 146, line 15.

Dated: March 8, 1947.

DOWNEY, BRAND,
SEYMOUR & ROHWER,
/s/ JOHN F. DOWNEY,
Attorneys for Appellee,
Merced Irrigation District.